

# KLAMATH BASIN

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON WATER AND POWER  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED THIRTEENTH CONGRESS  
SECOND SESSION  
TO  
HEAR TESTIMONY ON S. 2379, THE "KLAMATH BASIN WATER RECOVERY  
AND ECONOMIC RESTORATION ACT OF 2014"

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JUNE 3, 2014



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## KLAMATH BASIN

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TUESDAY, JUNE 3, 2014

U.S. SENATE,  
SUBCOMMITTEE ON WATER AND POWER,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:34 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Brian Schatz presiding.

### **OPENING STATEMENT OF HON. BRIAN SCHATZ, U.S. SENATOR FROM HAWAII**

Senator SCHATZ. Good afternoon.

Today we're here to discuss S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014. This legislation is critically important to the Klamath Basin in Oregon and California for a number of reasons. It will provide certainty of water for irrigation and for fish and wildlife while providing economic development opportunities for the Klamath Tribes.

In addition the legislation authorizes two monumental agreements, the Klamath Basin Restoration Agreement, also known as KBRA and the Klamath Hydroelectric Settlement Agreement, referred to as KHSA.

Both the KBRA and KHSA were finalized in 2010 by all of the relevant stakeholders. Because they require Congressional approval, not every provision of this agreement has been implemented yet. These agreements are important for dam removal, protecting fish production and establishing reliable water and power supplies for all users.

Last year, about this same time, Senator Wyden, who was then the Chair of the Energy and Natural Resources Committee convened a round table hearing to bring together a coalition of stakeholders with two overall goals.

The first, to get a final agreement that the entire Klamath Basin could support.

The second, to reduce the overall costs of the agreement.

From what I've been told the coalition was successful in reaching both goals. Today's hearing will highlight the hard work accomplished over the past year.

I want to commend the stakeholders and Senator Wyden and Senator Merkley for their work on this issue.

Unfortunately, I have a scheduling conflict and cannot stay to chair the hearing, but I've spoken with Senator Wyden and he has agreed to chair the hearing today. I look forward to following up

with him and any others on the committee on the next steps and anything that I can do to be supportive in my role as subcommittee Chair.

At this time, I'll turn over the gavel to Senator Wyden.

**STATEMENT OF HON. RON WYDEN, U.S. SENATOR  
FROM OREGON**

Senator WYDEN [presiding]. Thank you very much, Chairman Schatz. You have been a champion during your time in the Senate for innovative approaches to address complicated water issues. I've been glad to join you as a co-sponsor in many of those proposals.

I understand that you do, as you indicated, have some scheduling conflicts. I very much appreciate your giving me the opportunity to accept the gavel to finish this hearing. I thank you for it.

Today's hearing, in my view, is a victory for the Oregon way. The coming together of Oregonians from a variety of diverse backgrounds, to solve challenges that virtually everybody thinks cannot be solved. Many of those who have trekked from Oregon have come thousands of miles away from the Basin, worked tirelessly to craft a comprehensive agreement. Now we can move forward in the days ahead to pass legislation built around their fine work. In fact, there is still fresh ink from signing this landmark agreement in a ceremony that recently brought Interior Secretary Sally Jewel to the banks of the Klamath.

A word about the round table that we held just about a year ago.

I think both here in Washington, DC, and in the Basin, it was generally felt that this would be fine to have a hearing, might even be useful. Good to have a chance to have the various parties on the record. But suffice it to say, I'm pretty sure most of our guests booked a return flight home for that afternoon because they thought they might come and say their piece and that would be that.

During the course of the round table Senator Merkley and I, in effect, called an audible. We saw an awful lot of good will and an awful lot of cooperation between the various parties. So between the two of us, working closely with the Governor, Richard Whitman, who is here, who has done a terrific job on this and others. We asked essentially all our guests to be in the office 3 or 4 in the afternoon.

Everybody had to, kind of, change travel plans and the like. They were a little puzzled about what it was we were going to ask them to do. Senator Merkley and I made the judgment that there was a real chance now to break the ice and to get this done.

So what we said is we'd like the group, by the end of the year, to come together with a strategy that would make it possible for members from Oregon and California to be united in legislation, to consummate that agreement and that we would, over time, be able to win the support of Congress, that certainly from a fiscal standpoint, was in pretty tight straits. So as our guests gathered around that round table, they were a little curious about what we were going to propose.

The first thing we said is we need you to cut the cost of the agreement by between a quarter and a third. Pretty much everybody gasped and wondered if that might be possible.

Then we said we had to deal with the issues of the Upper Basin, which had been particularly challenging, trying to find a comprehensive agreement on that.

Then we said that we had to find a way to voluntarily reduce water usage, which again, was another very challenging issue.

Suffice it to say, we sit here, about a year later and essentially all of those goals have been met.

The pledge to lower the cost by more—between a quarter and a third has been exceeded. We have driven the cost down below that. I think that is particularly powerful as a message here in Washington, DC, with respect to how determined stakeholders are to get a solution to this issue.

Now the blueprint that the stakeholders have, in effect, agreed to now is codified in S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act. I've introduced this with Senator Merkley and Senator Feinstein and Senator Boxer. The bill authorizes the agreements that have been reached by the various parties and sets forth a lasting solution for water management in the Basin. Predictable water supplies for farmers and ranchers give long term certainty to our vital agricultural sector while protected water for fish and wildlife and comprehensive restoration efforts ensure the recovery of our special fish runs and water for our refuges.

The legislation, in my view, provides a sustainable and more economically certain future for the Klamath Basin.

While this bill is a function of years and years of hard work, let's not forget the formidable realities that continue to strain the Basin. The Klamath is enduring its third straight year of pounding drought which this year is already causing restrictions for some off project irrigators.

So, obviously finding a solution to this is a time sensitive matter. It's really more than time sensitive. It is urgent.

So we look forward to hearing the testimony of our guests today. They have done their part to craft a more prosperous future for the Basin, to lay out, what I think, is really a model for resolving water challenges that people think are, as I described it, impossible to bring people together in. Now it is time for the U.S. Senate to carry this agreement home.

In a moment I'll introduce my partner in this whole effort, Senator Merkley, who is here to testify. But let me recognize Senator Heller in Nevada. They too, know a little bit about drought and the challenging water issues of the West. Senator Heller has always worked cooperatively in this committee both when I was chair and when I wasn't. So Senator Heller, we welcome your comments.

Senator HELLER. Thank you, Mr. Chairman. I certainly appreciate your comments and appreciate your work on this committee.

I will postpone any opening comments to who we have in front of us today. So I will pass on an opening statement at this point.

Senator WYDEN. Very good.

Let's have Senator Merkley come up. I think it's understood that Senator Merkley plays a vital role in natural resources issues as an influential member of the Appropriations Committee. But he has been totally immersed in this issue since he came to the U.S. Senate.

As I indicated in my opening remarks, Senator Merkley, the fact that you were willing to stick your neck out that day we had that round table.

We called an audible.

We said let's bring everybody to the office and see if we can make some headway.

Your participation in this effort, we simply would not be here without your good work. So we welcome your remarks.

I believe our Chair, Senator Landrieu, has indicated to me that it would be fine if you choose, and I know your schedule is tight, that you can accompany Senator Heller and I on the Dais. But we look forward to your remarks. Thank you for all that you have done to make this day possible.

**STATEMENT OF HON. JEFF MERKLEY, U.S. SENATOR  
FROM OREGON**

Senator MERKLEY. Thank you very much, Chair Wyden and Ranking Member Heller. It's a real pleasure to come here and testify today. I'm going to keep my remarks brief because it is the people who will testify on the next two panels that have the real stories to tell, they're going to give you the reality of the situation on the ground and will give you the ultimate reasons that this bill should pass.

I applaud all of them for coming today. I will be able to stay for a while and listen to their testimony. It's an amazing group of individuals with diverse, as diverse, stakeholders coming together in this effort.

I want to highlight one aspect of this bill for you.

In many ways the solutions that local residents are implementing in the Klamath Basin point to a new model for managing our natural resources, collaboratively based on local needs, rather than from a place of conflict based on litigation and talk down management decisions. Across this country and this is certainly true in my State, natural resource management is a source of constant conflict. Without any collaboration or shared vision opposing sides sue each other, resort to the courts or enforcement of Federal laws to achieve their goals.

The people of the Klamath Basin lived in that reality for many decades. Lawsuits, protests and threats tore the community apart. In 2001 when the Endangered Species Act forced a water shutoff, this Basin saw some of the worst impacts of this approach to natural resource management as people lost their farms and subsequent water management caused a disastrous fish die off and the loss of fishing jobs.

The people of the Klamath Basin have found a better way forward now. They've engaged in years of patient, diligent, persistent collaboration and negotiation and have developed a comprehensive plan to manage the limited water supply and restore the ecosystem of the Basin. Every stakeholder is making a sacrifice, a significant sacrifice, in some cases in the form of water that is critical to the family farming operations.

But each stakeholder is also gaining something in exchange. In some cases for the certainty and sanity in how water and other natural resources in the Basin are managed. If we could have more



of our natural resource conflicts resolved through this kind of collaborative approach, our Nation's resources would be in much better shape.

The stakeholders of Klamath Basin, often fighting each other for decades, have come together and developed an amazing plan. It is now our challenge as a legislature to help put that plan into action.

Thank you very much, Mr. Chairman.

Senator WYDEN. Thank you very much, Senator Merkley.

Please, we'd welcome, given all the work you've done, to have you up here on the Dais with us.

So let's bring forward our panel of witnesses.

Mr. John Bezdek, Senior Advisor to the Deputy Secretary, Department of the Interior.

The Honorable Don Gentry, Chairman of the Klamath Tribe.

Ms. Becky Hyde.

Mr. Richard Whitman.

Mr. Roger Nicholson.

I think Ms. Hyde has family here. I think Mr. Bezdek has family here. It's always been an Energy and Natural Resources tradition to have you all introduce your family. So let's see the cast of characters here.

Ms. Hyde.

Ms. HYDE. Thank you. This is Jack Hyde. He's my son.

Senator WYDEN. Very good. I think I saw your sister off to the prom recently when we had our last Town Hall meeting there. We're glad you're here, Jack.

Mr. Bezdek.

Mr. BEZDEK. Yes, Sir, Mr. Chairman.

This is my wife, Dori. These are my 3 children, Elliott, Clarissa and Meredith.

Senator WYDEN. Very good.

Your dad is going to knock it out of the park.

[Laughter.]

Senator WYDEN. It's good to see you.

Thank you all.

OK, let's start with Mr. Bezdek and then we'll go to Mr. Gentry, Ms. Hyde, Mr. Whitman, Mr. Nicholson.

You don't have to worry too much. We don't have to play too many musical chairs.

I'm just going to call on you anyway.

Alright, we're going to make your prepared statements a part of the record in their entirety. I know there's always a compulsion to read prepared statements. I think we've got a lot of votes at 4 o'clock. So whatever we can accomplish between now and 4 would be particularly good.

Mr. Bezdek, we welcome you. You made a lot of treks to paradise, to the Klamath Basin. We really appreciate it. We wouldn't be here without your good work.

So, go ahead.

**STATEMENT OF JOHN C. BEZDEK, SENIOR ADVISOR TO THE  
DEPUTY SECRETARY, DEPARTMENT OF THE INTERIOR**

Mr. BEZDEK. Thank you, Mr. Chairman.

Thank you, Mr. Chairman and Ranking Member Heller. I am pleased to inform you that the Administration supports enactment of S. 2379 as introduced. We do so with the understanding that additional sources of non Federal funding must be identified in order to ensure full and timely implementation of the Klamath agreements.

The need for this legislation is clear. Irrigation shut offs, annual reduced deliveries for the Reclamation project, salmon die offs, closed ocean fishing, closure of tribal fishing, bird mortality on our refuges and this past year, no surface water deliveries to over 400 Upper Basin farms and families. These are all too familiar events.

This year we were once again faced with the very same shortages and the impacts to resources and the communities of the Basin that come from these very shortages. Quite simply the current band aid approach to addressing these issues is ineffective and unsustainable.

The cost of inaction is also significant. The 2006 closure of the commercial fishing industry required over \$60 million in extraordinary appropriations from the Congress. Similarly, to farmers and ranchers required over \$10 million in 2010 and \$40 million in 2001.

S. 2379, if enacted, would authorize the implementation of all 3 Klamath agreements and provide the means and the tools to address the needs of the Klamath Basin and do away with the need for the Federal Government to take such extraordinary steps.

Almost a year ago, Senator Wyden, you called us together and you did tell us to focus on two things.

One, resolving the upper water rights issues between the tribes and Upper Basin water users.

Two, reducing the cost of the agreements.

I sit here before you today with this extraordinary group of individuals sharing this table, but also in solidarity with all the parties of the Klamath agreements, who looked inward toward themselves and with each other to find a solution and who understand when it comes to the Klamath Basin and water resources, part of something is better than all of nothing.

First of all we have a settlement on the tribal rights in the Upper Basin.

Second, we have found ways to reduce costs.

Just as critically, S. 2379 maintains and authorizes the KBRA and KHSA, thereby providing us the very unique opportunity to restore this Basin from its headwaters all the way to the ocean.

Mr. Chairman, despite these hardships, I am oftentimes asked whether there should be a Federal role. I believe there are compelling Federal interests at stake.

First and foremost, saving jobs by preserving farming and ranching on thousands of acres, maintaining a \$600 million a year economy, creating hundreds of new jobs in commercial and sport fishing, creating numerous temporary jobs in the construction industry, improving the economy's health and way of life for thousands of tribal members in this Basin from improved fisheries, water quality and jobs that would be created.

In addition our Klamath Basin National Wildlife Refuges, such treasured refuges, so critical for the Pacific flyway, yet starved for water, will get adequate water supplies in 9 out of 10 years.

By restoring the Klamath Basin the need to look to the Central Valley to get water supplies to protect fall migration of salmon will be significantly lessened. But perhaps just as important as these economic facts and figures is that the societal fabric of an entire Basin and a way of life for farmers, fisherman and tribes will be restored.

We acknowledge that these agreements are not perfect. But as my good friend, Greg Addington, said before this committee last year, these agreements are about as perfect as an agreement as possible while still bringing together over 40 diverse interests toward a common goal.

On behalf of all of these interests, we stand ready to get behind S. 2379.

Thank you.

[The prepared statement of Mr. Bezdek follows:]

PREPARED STATEMENT OF JOHN C. BEZDEK, SENIOR ADVISOR TO THE DEPUTY  
SECRETARY, DEPARTMENT OF THE INTERIOR

Chairman Landrieu, Ranking Member Murkowski, and members of the Committee, I am John Bezdek, Senior Advisor to Department of the Interior Deputy Secretary Michael Connor. I began working on Klamath Basin issues in 1997 and since 2007 have had the privilege of working directly for the Department of the Interior (Department), alongside our interagency federal team, with the varied and diverse interests of the Klamath Basin regarding the Klamath Agreements (Agreements): the Klamath Hydroelectric Settlement Agreement (KHSa); the Klamath Basin Restoration Agreement (KBRA); and the Upper Klamath Basin Comprehensive Agreement (UKBCA). I am pleased to provide the views of the Administration regarding S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014, which would authorize the Klamath Agreements. These agreements were envisioned to provide a comprehensive solution for water, fishery, and power issues in the Klamath Basin.

The Klamath Basin has a long history of conflict driven by scarce water resources that have been over-allocated among competing uses. While the conflict began generations ago, in the recent past we have seen the following: water deliveries to Reclamation's Klamath Project were shut off in 2001, which caused grave hardship for hundreds of farmers; over 30,000 adult salmon perished in the lower Klamath River (2002); closure of the commercial ocean fishery along the Oregon and California coasts due to poor Klamath Basin stocks in 2006; no surface water irrigation deliveries made to the upper basin ranching communities (2013); reductions in water supplies to the Klamath Reclamation Project (2010, 2013, and 2014); the continued voluntary tribal fishing ban, since 1986, for c'waam (Lost River Suckers) and Shortnose Suckers in Upper Klamath Lake; Endangered Species Act listings on declining populations of suckers in Upper Klamath Lake and Coho salmon in the Klamath River; limited water deliveries to wildlife refuges for a number of years, continuing today, for the water needed to support one of the most important stop over points on the Pacific Flyway; and a significant increase in the cost of power which makes it more expensive for irrigators to conserve and re-use water. All of these events continue to cast uncertainty and doubt upon the communities of the basin, including the continuation of the way of life of the tribes and the ranching communities and the \$600 million a year in agricultural products and jobs that contribute to the local economy.<sup>1</sup> Moreover, analysis shows all of these problems in the basin will likely worsen and may occur more frequently in the coming years due to impacts of climate change unless a long term solution is implemented.

Fortunately, the tools, in the form of the Klamath Agreements, are available and ready to be implemented to address these issues. Collectively, these three Agreements approach the restoration of resources, economies, and communities of the basin in a holistic manner instead of continuing the band-aid approach that often-times falls short of providing even short-term relief—much less addressing the underlying causes.

<sup>1</sup> Revised Cost Estimates for the Klamath Basin Restoration Agreement. June 17, 2011. <http://216.119.96.156/Klamath/2011/06/RevisedCostEstimates.pdf>

These agreements have broad and diverse support. There are currently 45 Parties to the KHSA and 43 Parties to the KBRA, representing Federal agencies, California and Oregon, three Indian tribes, two counties, irrigators, and conservation and fishing groups<sup>2</sup>. There are sixteen parties to the Upper Basin Agreement, including the State of Oregon, the Klamath Tribes, and a broad coalition of Upper Klamath Basin irrigators.

The stakeholders of the Klamath Basin have made the courageous decision to set aside differences and generations of acrimony to find a better path forward. Implementing these agreements and accomplishing the parties' collective goals will take substantial resources. Yet the cost of inaction could easily be even higher, not just in the form of additional dollars to be expended in the future, but also in the form of additional stressors upon communities in the basin. Thus, we support S. 2379 and the Agreements that it will implement, including the provisions on costs provided that all parties understand that full implementation of the Klamath Agreements will need additional, meaningful, non-federal cost-share that will reduce the overall costs to the United States. Over the course of implementing S. 2379, the Administration will work closely with all the parties to secure additional non-federal sources of funding.

Despite the non-partisan development of this settlement framework over several federal and state administrations, the Administration acknowledges there are a handful of parties that have not signed the Klamath Agreements. We will continue our efforts to find common ground with these parties; however, it is important that the Committee understand that finding common ground has been difficult because some of the opponents have taken positions that would pose unacceptable risks to the farmers, and others oppose efforts to restore the fisheries that are important to the tribes and fishing communities. But we also believe the time is ripe for action and that we have a unique opportunity to heal and restore the basin in a lasting manner. We must not lose this opportunity.

#### UKBCA

In 2010 when the KBRA and KHSA were signed, many felt the job was done. The reality is that the parties' work was unfinished due to our inability to reach settlement with those many ranchers located on the tributaries to Upper Klamath Lake. With the execution of the UKBCA this past April, we now are able to address restoration of the resources and communities from the headwaters of the Klamath Basin all the way downstream by resolving claims surrounding the tribal water rights held in trust by the United States on behalf of the Klamath Tribes. We are able to do so by providing a framework for a balanced approach to management of water resources in the upper basin that comports seamlessly with the KBRA. In the UKBCA we have been able to simultaneously recognize the seniority of the Tribal water rights, allocate sufficient water to restore and maintain the fisheries, and establish a framework for maintaining the majority of irrigation in the upper basin. All of this is accomplished through the establishment of certain specified instream flows in tributary streams above Upper Klamath Lake, the retirement of 30,000 acre-feet of water previously consumptively used for irrigation, and, through riparian agreements with private landowners, to restore habitat necessary to support the fishery, while also providing for a stable, sustainable basis for the continuation of irrigated agriculture in the upper basin. Just as importantly, these actions will be managed by local stakeholders through the establishment of a Landowner Entity and a Joint Management Entity.

S. 2379 also establishes tribal economic development funds to compensate the Klamath Tribes for additional commitments made in the UKBCA that were not made in the KBRA or KHSA, to implement a water management program in the upper basin. Since the beginning, the Klamath people have relied on the natural resources they needed to thrive in their traditional subsistence way; these resources, many of which require water to thrive, include the fish, animals, birds, and plants which have provided essential subsistence and economic resources to the Tribes, and which are deeply embedded in the Tribes' religious and cultural practice. All who are familiar with the Klamath Tribes understand the deep and long-term impact the past termination of its federally recognized status and the impacts on treaty resources have had upon the economic, religious, and cultural viability of the Klamath Tribes. The economic development funds authorized under S. 2379 will provide sup-

<sup>2</sup>The Department of the Interior and National Oceanic and Atmospheric Administration signed the KHSA; the federal agency parties are not signatories to the KBRA. The KBRA includes provisions that these agencies will become parties when Federal authorizing legislation is enacted. PacifiCorp signed the KHSA; it is not a Party to the KBRA.

port to help the Tribes in their commitment to build a viable tribal economy, restore their homeland, and increase the opportunities for the exercise of tribal treaty and cultural rights. The funds will accomplish this through the purchase of timber and other lands to be brought back into Trust and the restoration of their subsistence fishery that is central to who they are as a people. This will also provide significant movement towards self-determination that has been so elusive since the restoration of federal recognition.

#### KHSA

The KHSA is a unique combination of environmental and economic interests striking an agreement that combines both business sense and protection of natural resources. It is an agreement to study the potential removal of four privately owned (PacifiCorp) hydroelectric facilities on the Klamath River and to determine, based on a host of scientific and engineering studies, whether removal of these facilities will advance restoration of fisheries and will be in the public interest. The KHSA calls for removal to occur in 2020, should the Secretary of the Interior determine that removal is in the public interest. Congressional authorization is necessary for the Secretary to make this determination. If there is a decision to remove these facilities, the costs will be borne by a combination of PacifiCorp's electricity customers in Oregon and California through a minimal surcharge and a water bond from the state of California. Consequently, there would be no federal costs associated with facilities removal under the KHSA.

The KHSA also includes certain liability protections for PacifiCorp if these facilities are removed. The current cost estimate is below the cost cap included in the KHSA, though it remains uncertain at this point which non-federal entities would bear any costs in excess of those protections, should such a situation arise. The KHSA also provides a commitment for PacifiCorp to transmit and deliver federally generated power to the Klamath Project, which could provide savings to water users on power costs, making for efficient project operations, and opportunities to conserve water. On this point, discussions are ongoing between PacifiCorp, the Department, Bonneville Power Administration, Western Area Power Administration, and the Klamath water users on ways to provide power at reduced costs to both the on and off-project communities. Analysis shows that purchasing Federal power could save larger irrigation loads three-quarters to one cent per kilowatt hours, or about 7 to 10 percent. The irrigators who could benefit comprise about half the irrigation loads in the basin; however, passage of S. 2379 would be needed to serve irrigators that are north of the Klamath Project. While these discussions may lead to near-term reductions in power costs, we also note that the KBRA includes programs that require S. 2379's authorization and budget to provide more substantial long-term power relief. Studies are currently underway analyzing the best possible paths forward in achieving the long-term power goal once S. 2379 is enacted.

#### KBRA

The KBRA is a restoration agreement that includes water allocation and fish habitat restoration actions, predicated on, and working in conjunction with dam removal. The KBRA includes agreements among tribal and non-tribal entities resolving water rights disputes and provides the means for Reclamation's Klamath Project to conserve water supplies and develop sources of power that will place the Project on par with other similarly sized irrigation projects in the West. The KBRA provides a reliable supply of water to the two national wildlife refuges that currently receive adequate water supplies in less than one out of 10 years. If funded, the KBRA will put tribal members to work on habitat restoration actions needed in the basin. Through the establishment of a Federal Advisory Committee Act charter, the KBRA will give parties in the Klamath Basin a major voice in the decision making process regarding the basin's resources.

To illustrate how the Klamath Agreements would change the impacts of the current water year, if fully authorized, involuntary shortages among Klamath Project irrigators could be avoided, the Lower Klamath National Wildlife Refuge would have a guaranteed supply of water (compared to no water being available this year), and upper basin irrigators might not be subject to having their diversions curtailed due to water rights administration. In addition, fishery resources would have a dedicated supply of water, in conjunction with an identified process for restoring degraded habitat. Without the KBRA, the Klamath Reclamation Project and the Klamath Tribes are likely to exercise the water rights recognized in the Klamath Basin Adjudication with increasing frequency, thereby creating uncertainty for and jeopardizing the livelihood of irrigators in the Upper Klamath Basin.

While most of the items in the KBRA, especially those involving tribal and fisheries programs, are presently authorized under existing law, items associated with making Reclamation's Klamath Project more efficient and flexible, such as in allocating funds received from the leasing of refuge lands to the wildlife refuges and irrigators and clarifying the Klamath Project's purposes, require this additional Congressional authorization. Legislation would also be needed to provide the power for water management benefits to irrigators and to supply Federal electricity to off-project irrigators.

#### KHSA/KBRA SCIENCE PROCESS

Between the signing of the Klamath agreements in early 2010 and today, many federal studies have been undertaken and completed that analyze the potential effects of Klamath River dam removal and implementation of KBRA on local communities, tribes, and the environment. A Final Environmental Impact Statement analyzed the proposed action to remove the four lower PacifiCorp dams on the Klamath River in 2020 and to implement the KBRA, as well as three alternatives where some or all of the dams would remain in place.

The process undertaken to develop new information for a Secretarial Determination was rigorous, open, and transparent; it provided multiple opportunities for stakeholder and public participation, included independent subject-matter experts to provide a breadth of perspectives, and relied on multiple levels of independent peer review to ensure objectivity and accuracy of findings.

Over 80 meetings and workshops were held throughout the basin over a period of two years that allowed for public and stakeholder participation in the science process for the KHSA and the KBRA. The public and stakeholders provided input on hypotheses to be tested, study designs, available sources of information, data analysis, and conclusions to be drawn from the analyses. The public involvement improved the quality of reports.

A summary of the findings from the science process is attached as an Appendix. All of these studies and materials are available to the public and can be found at <http://klamathrestoration.gov/>.

#### PARTIES WHO HAVE CONCERNS ABOUT THE KLAMATH AGREEMENTS

We acknowledge that there are a small number of parties who participated in the negotiations but have chosen not to sign the Klamath Agreements. We respect that each party has its own unique concerns and must make its own decisions as to what it believes is in its best interest. Some of those who oppose the Klamath Agreements want to maintain the status quo or have general concerns about dam removal; others believe their resources are being inappropriately harmed or their rights are being terminated, or that they are bearing an unfair share of the adverse consequences of the Klamath Agreements.

I wish to be clear that given the ongoing challenges and increasing demands for limited water resources, we should continue to evaluate opportunities to develop additional water storage and power generation opportunities where they make sense. But we should also not be afraid to evaluate reduction of water use or potential dam removal when the specific circumstances warrant. The KHSA, for example, reflects the unique circumstances of the Klamath Basin, where the owner of these private dams, in making a business decision that is in the best interests of its electricity customers and the company, has agreed to permit the Secretary of the Interior to evaluate whether their removal would advance fisheries and be in the overall public interest as part of a basin-wide restoration effort that addresses many of the systemic problems that continually plague the Klamath Basin.

There are others who favor dam removal but do not support the Klamath Agreements because they either want to remove or significantly limit irrigated agriculture from the basin or believe that the assurances in the Agreements regarding water supply and the connected issue of river flows terminate tribal rights. As to the former, irrigated agriculture is part of the societal fabric of the basin and, as mentioned earlier, provides significant jobs and economic support to all communities of the basin. While the KBRA does provide further funding for voluntary retirement of up to 30,000 acre-feet of irrigation water on a willing seller or buyer basis, total removal of the loss of most of the irrigated agriculture in the basin is simply not consistent with a comprehensive and durable restoration program meant to assist the communities of the basin and their respective economies and ways of life. As to the latter, the tribal parties, state and federal fishery agencies, and environmental and fishing groups concluded that the water and fisheries program would significantly improve basin fisheries. The agreements do not terminate any tribal rights.

We have also heard the concerns of those around the reservoirs whose properties and businesses may be most directly impacted by dam removal. On this point, we believe that if S. 2379 is enacted, there should be a fund established, managed by representatives in local communities, to recompense land owners for significant diminishment in property value that occurs as a result of dam removal. The cost of such a fund, we believe, should be deemed a cost of mitigation associated with dam removal, and thus borne by non-federal sources. Upon enactment of S. 2379 we will meet with representatives from California and Oregon, as well as the local governments most affected by dam removal to assess the potential for establishment of such a fund.

#### CONCLUSION

The Administration supports enactment of S. 2379, which is vital to the communities of the Klamath Basin provided that all parties understand that full implementation of the Klamath Agreements will need additional, meaningful, non-federal cost-share. Over the course of implementing S. 2379, the Administration will work closely with all the parties to secure additional non-federal sources of funding to offset the new federal costs and ensure timely implementation of the Klamath Agreements. This concludes my written statement. I am pleased to answer questions at the appropriate time.

#### APPENDIX

##### SUMMARY OF KEY FINDINGS REGARDING KLAMATH RIVER DAM REMOVAL AND IMPLEMENTATION OF KBRA

This document is intended to serve as a summary and, as such, numbers cited herein represent averages and/or aggregates which may include associated levels of uncertainty that are explained fully in the contributing studies. All of the scientific studies, which include the complete scientific analysis and associated uncertainties, are available at [klamathrestoration.gov](http://klamathrestoration.gov). Any language below that appears to be a statement of fact is the Department's best understanding and approximation of future events, based on extensive scientific study, but still subject to significant levels of uncertainty.

##### *Dam removal, sediment processes, and impacts on flooding:*

- The most probable cost for full dam removal, which is the preferred alternative identified in the FEIS, is about \$292 million in 2020 dollars and is under the State cost cap of \$450 million. There is a 99 percent probability that removal costs would be no more than \$493M and a 1 percent probability that removal costs could be less than \$238M.
- Dam removal would mobilize between one-third and two-thirds of the 13 million cubic yards of sediment behind the dams. The majority of the sediment is fine-grained material that would be readily transported to the Pacific Ocean 2 to 3 months following the drawdown of reservoirs in the winter of 2020.
- Extensive chemical testing of sediments behind the dams shows that human health would not be at risk due to contact with these sediments.
- Dam removal would immediately restore more natural water temperatures and dissolved oxygen concentrations important to downstream fish and fisheries.
- Dam removal would immediately eliminate toxic algae produced in the reservoirs; toxic algae create health concerns in the reservoirs and downstream in the Klamath River for people, fish, and wildlife.
- Long-term flood risks would increase slightly for about 18 miles downstream of the location of Iron Gate Dam. Analyses show that some additional structures currently outside the 100-year flood plain would be located in a new 100-year floodplain following dam removal. If dam removal were to proceed, the Dam Removal Entity would work with willing landowners to reduce or eliminate flood risk for these additional structures.

##### *Impacts of dam removal and KBRA on fish and fisheries:*

- The timing of reservoir drawdown in a single winter season was designed to minimize negative impacts of released sediments on sensitive fish species, particularly federally listed Coho salmon.
- Basin-wide adult and juvenile salmon mortality is expected to be less than 10 percent in the year following dam removal, even under worst-case flow conditions.
- In the long run, opening up fish passage to the Upper Klamath Basin through dam removal and restoring aquatic habitat under the KBRA would increase

salmon and steelhead production. For example, annual Chinook salmon production would increase about 80 percent (ranging from 40 to 190 percent among modeled years).

- The increased production would increase Chinook salmon harvest about 50 percent for commercial and sport ocean fisheries, as well as for in-river tribal fisheries.
- Coho salmon would be expected to access 68 miles of stream habitat upstream of Iron Gate Dam, including 23 miles currently inundated by the reservoirs, thereby advancing the recovery of this federally listed species.
- Steelhead trout would be able to migrate to historical habitat above Iron Gate Dam, including up to 420 additional miles of stream, and thereby advancing the most prized game fishery in the Basin.
- Dam removal would also expand the distribution and number of trophy redband rainbow trout, another prized game fishery, throughout the hydroelectric reach of the river.
- Dam removal would totally eliminate a large non-native game fishery on the reservoirs, which includes bass and yellow perch.

*Climate change impacts on water temperatures, fish, and flows:*

- Over a period of 50 years (2012 to 2061), climate change models show that water temperatures in the Klamath Basin would increase 1 to 3 degrees C (2 to 5 degrees F) and earlier snow melt would decrease summer flows.
- Removing the Klamath River dams would restore salmon access to critical cool-water habitat for spawning and rearing in the Upper basin, thereby helping to buffer against effects of climate change.
- Removing the dams would immediately improve late summer and fall water temperatures for salmon below this reach, thereby buffering against future impacts of climate change.
- Decreased summer flows will worsen already strained water supplies needed to support farms, refuges, and fisheries.

*Impacts on jobs and regional economies:*

- Dam removal and full KBRA implementation would create a number of full time, part time, and temporary jobs:
  - Hundreds of commercial fishing jobs in five management areas from northern California to central Oregon;
  - 1,400 jobs during the year of dam removal;
  - 300 annual average jobs over 15 years for KBRA programs;
  - 70 to 695 farm jobs in drought years depending on drought intensity. Dam removal would also result in the loss of about 70 jobs associated with the operation and maintenance of the dams and changes in the recreational industry (reductions in whitewater rafting and reservoir fishing/boating).

*Tribal and Cultural Impacts:*

- All of the native people residing in the Klamath River environment have spiritual beliefs and traditional practices that are inseparable from the River and surrounding homeland environments. Dam removal and implementation of the KBRA would help address tribal trust and social issues identified by the Klamath River Basin Tribes as detrimental to their traditional way of life. Dam removal would have beneficial effects on water quality, fisheries, terrestrial resources, and traditional cultural practices. Dam removal would enhance the ability of Indian tribes in the Klamath River Basin to conduct traditional ceremonies and other traditional practices.
- Dam removal and reservoir drawdown could affect Native American cultural resources sites reported to be currently submerged beneath the reservoirs. Human remains may be associated with these sites. Plans to identify cultural resources and to avoid, minimize, or mitigate impacts to those resources would be developed in consultations with the appropriate State Historic Preservation Office, Tribes, and other Native American organizations.
- The removal of the dams and associated facilities, all part of the Klamath Hydroelectric Project, would result in effects to those historic properties. Plans to avoid, minimize, or mitigate effects to historic era properties would be developed in consultation with the appropriate State Historic Preservation Office and other historic preservation entities.



*Hydropower, Green House Gas emissions, and electricity customers:*

- Dam removal would eliminate about 82 megawatts of hydropower in 2020 (enough power for 70,000 homes), which would be made up by a mix of other energy sources.
- Following dam removal in 2020, approximately 526,000 metric tons of carbon dioxide equivalents (MTCO<sub>2</sub>e) per year would be emitted to the atmosphere from replacement power assuming PacifiCorp's current resource generation mix. This number would decrease to approximately 451,000 MTCO<sub>2</sub>e per year assuming PacifiCorp met California's goal for replacement power sources.
- A 2010 analysis by PacifiCorp prepared for the Oregon and California PUCs demonstrates that dam removal as laid out in KHSA would be less costly for their customers (about \$251 million), and less risky, as compared to likely customer costs associated with relicensing the four dams, which would be in excess of \$460 million over a 40-year license term.

*Wildlife refuges:*

- Dam removal and KBRA implementation would allow the refuges associated with Reclamation's Klamath Project to have greater certainty about water deliveries with newly established allocations, even during drought years, and increased flexibility in the timing of water deliveries.
- Full refuge needs would likely be met in 88 percent of years; currently refuge needs for water are met in less than 10 percent of the years. These NWRs wetlands are critical components of the Pacific Flyway, the corridor for migrating birds from as far away as Alaska and Mexico.
- The additional water deliveries—and the increased predictability of those deliveries—would mean that greater numbers of migratory waterfowl, non-game water birds, wintering bald eagles, and other sensitive species would be supported by the refuges and would increase recreational wildlife viewing.
- The estimated increase of over 190,000 waterfowl in the fall would result in an additional 3,600 hunting trips annually.

*Real Estate:*

- Upstream of Iron Gate Dam studies identified 668 parcels near Copco 1 and Iron Gate reservoirs which either have water frontage, water access, or views of reservoirs. Of these 668 parcels, 127 include single family homes. These 668 land parcels would decline in value if dams were removed and reservoirs drained.
- Land values of parcels downstream of Iron Gate Dam, with river views and river access, may increase in the long-term because of restoration of the river, including improved water quality and more robust salmon and steelhead runs.

*Flows:*

- The differences in monthly average flows between dams remaining in place and dam removal options are relatively small; however, without the dams, pulse flows and other seasonal fluctuations beneficial to fish would occur more often.
- The absolute minimum flow target under the KBRA would be approximately 800 cubic feet per second (cfs) at the location of Iron Gate Dam. In most months and years, however, flows would be much greater. In extreme drought years, flows could drop slightly below this target, but never drop below 700 cfs owing to the water-management provisions in the KBRA.

Senator WYDEN. Thank you very much, Mr. Bezdek.

Let's go now to Mr. Gentry.

Mr. Gentry, I've said it to you before privately, but I want to say publicly how much I've admired your courage, your persistence and your good will in tackling, you know, this issue. Certainly after the court decisions you didn't have to take that path. So we are very appreciative of your effort to be part of, as I described it, the Oregon way, bringing people together who everybody thought couldn't possibly agree. To a great extent we're here today because of you. So we very much appreciate your good work.

**STATEMENT OF DONALD C. GENTRY, CHAIRMAN OF THE  
KLAMATH TRIBE**

Mr. GENTRY. Thank you, Senator. I appreciate that.

Senator Wyden, Ranking Member Heller, as was stated, my name is Don Gentry, Chairman of the Klamath Tribes. I want to thank the subcommittee for this opportunity to provide my testimony at this hearing today.

I also want to thank Senators Wyden, Merkley, excuse me, Boxer and Feinstein for introducing the S. 2379.

It's my honor to represent the Klamath, Modoc and Yahooskin Paiute people at this pivotal time in our history. I want to convey to you why our people have worked so hard over the past decades to forge these agreements and why it's critical for Congress to pass S. 2379 to implement them.

I'm also here to be the voice of our fish, the fish that we depend on for our subsistence and for our cultural and traditional way of life. Maintaining our traditional way of life, our spiritual and cultural practices is essential for providing for the physical and social health of our people.

My Klamath name is dici gyank which translates, having done good things. This name was given to me by a beloved elder woman at our annual Return of C'waam ceremony. During this ancient ceremony we pray and thank our creator for the fish and pray for their return. We thank him for everything that he's given for us and pray to the people to the North and to the South and to the East and the West.

This elder was a little girl when the salmon used to come up to our homeland in the Klamath Basin prior to the first dam being put on the river. My relationship with her grew over the years as I took our C'waam, our Lost River Sucker, to her. Through her I learned traditional ways and tribal values that have guided me throughout my life. She has since passed on. I believe it is through her prayers and the prayers of our ancestors that we are here today at this critical point for the future of our people and the people of the Klamath Basin.

Through the Treaty of 1864 and our ancestors reserved to us our inherent time immemorial rights, one of which was the right to sufficient water to provide for our resources essential for our treaty hunting, fishing, gathering and trapping. Without the c'waam and ci'aals, the salmon, which have been denied migration for nearly 100 years to our homeland we simply cannot be the people the Creator intended us to be.

Through loss of our resources our people have shouldered a heavy burden associated with the Basin's development. Failed Federal, State policies have promised, over promised water, to a diverse set of stakeholders. This has fueled decades of conflict. These policies of extirpated treaty resources and brought the remnant of our treaty protected fisheries to the brink of collapse.

Our tribal fisheries sustained us for millennia. But a mere century of development threatens their continued existence. Now after centuries of harvesting tens of thousands of fish, we are restricted to only harvesting two fish annually for ceremonial purposes. But S. 2379 corrects these devastating policies and addresses these complex problems, laying the foundation for a brighter, sustainable future for our people and the people of the Klamath Basin.

For decades our leaders have fought to restore our fisheries and other resources for our current members and the generations to

come. It was through exercise of our sovereignty and the strength of our time immemorial treaty rights that key revisions were built into the agreements to address the root problems.

The Klamath agreements are focused on ecosystem restoration, reintroduction of salmon and steelhead, balanced distribution of limited water resources for fisheries and agriculture and on sustaining the economy of our region. Moreover, the agreements enable the Klamath tribes to play a central role in improving riparian habitat and quality to restore and support sustainable fisheries.

The agreements also provide a foundation for tribal economic development while resolving litigation among the parties.

For the first time there will be a coordinated, comprehensive strategy to address the Basin's foundational problems. The Klamath tribes will be paying close attention as this legislation moves forward. Parties to the Klamath agreements have worked hard to develop a locally based, consensus solution that resolves the fundamental problems associated with the Basin's limited supply of water. All the parties had to reach compromise to achieve this important milestone.

As introduced S. 2379 respects the hard fought negotiations and the agreements that the parties have reached and it honors our treaty rights and the resources we depend on. The Creator taught us that as long as the c'waam survive our people will survive. Therefore we support the legislation because it ensures survival of our resources and our people.

Senator Wyden, I thank you and the committee and your staff for the efforts to restore the Klamath Basin and for holding this hearing. I welcome any questions you have.

[The prepared statement of Mr. Gentry follows:]

PREPARED STATEMENT OF DONALD C. GENTRY, CHAIRMAN OF THE KLAMATH TRIBES

Chairman Schatz, Senator Wyden, and members of the Committee, my name is Don Gentry and I am the Chairman of the Klamath Tribes. I want to thank the Subcommittee for convening this hearing and for the invitation to present testimony. Also, I want to thank Senators Wyden, Merkley, Boxer, and Feinstein, for introducing Senate Bill 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014. As Chairman of the Klamath Tribes, it is my honor to convey to the Subcommittee the views of the Klamath Tribes in support of this critical piece of legislation.

I represent the people of the Klamath Tribes, which is comprised of three historically distinct tribes: the Klamath, Modoc, and the Yahooskin Band of Snake Indians. In 1864, our respective leaders entered into a Treaty with the United States. Through the Treaty our ancestors reserved to us, with the complete agreement of the United States, water rights that we have held since time immemorial. While we ceded other lands and rights to the United States for the benefit of its citizens, through the Treaty we reserved our water rights for hunting, fishing, gathering, and trapping. Treaty resources are essential to the Klamath. In addition to providing for our subsistence, treaty resources are central to our ability to maintain and exercise our cultural and spiritual practices, which are critical to the physical and social health of our families and community. Without our treaty resources, like the endangered c'waam (also known as the Lost River sucker), or ci'aals (salmon), which have been denied migration to our homeland by the Klamath River dams for nearly 100 years, we simply do not have the ability to live as Klamath People in the way our Creator intended. We have an inherent responsibility to restore and steward these resources, for our current 4,444 members and future generations.

Decades of failed federal and state policies have over-promised water resources across a diverse set of groups in the Klamath Basin and fueled decades of conflict. These failed water policies have already extirpated treaty resources and brought the remnant of our treaty-protected fisheries to the brink of collapse. But with the enactment of S.2379, the Basin is poised to correct these devastating policies, address

the complex problems affecting our treaty resources, and lay the foundation for a brighter, sustainable, future for our tribal community and the broader Klamath Basin community.

To understand why we are here at this point today, it is always important to reflect on our history. The Klamath Tribes once occupied a vast territory of 22 million acres of what is now southern Oregon and northern California. In the Treaty of 1864, we ceded much of this land to the United States, but reserved to ourselves 2.2 million acres of land, encompassing the entire Upper Klamath River Basin above Upper Klamath Lake. However, in the decades that followed, fraudulent surveys and devastating federal policies chipped away at our lands until, finally, the Termination Act of 1954 terminated our federally recognized Tribal status. Termination also brought the loss of our ancestral lands reserved through the Treaty, which now make up a significant portion of the Winema and Fremont National Forests. This abrupt loss of our forest-based Tribal economy was not only devastating to our people, it devastated the local Klamath Basin economy as well. At the time of termination, the Klamath Tribes was among the most prosperous Tribal Nations in the United States. Ironically and brutally, termination of the Klamath Tribes, which was allegedly based on our social and economic success, deprived us of the land base that was at the heart of that success. Predictably, termination precipitated severe economic and social devastation from which we are still struggling to recover.

The United States acknowledged the failure of the termination policy in the 1970s and our Tribal leaders led us through the maze of legal, political and social challenges necessary to restore our federally recognized status in 1986. Unfortunately, the restoration of that government-to-government relationship did not include the return of our ancestral lands even though the federal government's timber receipts on those lands had already exceeded their purchase price. Nor did federal recognition re-start our forest-based economy or heal social ills wrought by termination. To date the Tribes have reacquired only about 1,000 acres in scattered parcels.

As courts have repeatedly recognized, although our land was taken from us, we have continuously retained our rights to hunt, fish, gather and trap on our former reservation lands. However, over the past 150 years, governments other than the Klamath Tribes have implemented policies that over-allocated the Basin's limited water resources and ignored the Tribes' time immemorial water rights. These development policies primarily focused on out-of-stream water uses. Vast tracts of wetlands and even lakes were diked, drained, and transformed to farmland. Floodplains of our major river systems were developed for agricultural uses and hydropower dams were constructed on the Klamath River. Upper Klamath Lake was put to work as the primary reservoir serving the needs of agriculture and hydropower. These developments enabled robust non-tribal economies to develop and thrive utilizing the water resources of the Upper Basin.

The Klamath Tribes have borne many severe costs associated with developing the Basin, but have received few of the benefits. Our salmon and steelhead runs were completely wiped out when the first Klamath Hydroelectric Project dam was built in 1917. Additionally, the resulting changes in the hydrology of Upper Klamath Lake and its tributaries damaged other Treaty-protected fisheries. Loss of wetlands and riparian ecosystems, along with other land use changes have impaired water quality so severely that the two lake-dwelling sucker species—some of the toughest fish, and once among the most abundant fish in the Basin—have been pushed to the brink of extinction. Additional treaty resources such as plants, wildlife and waterfowl are imperiled as well.

Meanwhile, PacifiCorp shareholders and rate-payers have continuously benefited from the electricity produced by the dams that destroyed these fisheries. We have not fished for the endangered cwaam and koptu (Lost River and shortnose suckers) since 1986, while irrigated crops and livestock have been raised and sold each year from agricultural operations that depend on water from our rivers and lakes, and contribute to excessive nutrient loading that compromises ecosystem health. These fisheries sustained our people for millennia, but a mere century of development threatens their continued existence, and now, after centuries of harvesting tens of thousands of fish, we are restricted to two fish each year for ceremonial purposes.

In recent years, it has been difficult for our non-tribal neighbors as well. Failed policies and the poor management of the Basin have fueled decades of crisis, catastrophes and conflict. Overallocation of water resources has resulted in acrimonious competition and constant tension surrounding resources and water management decisions. Among the demands for limited resources are the water levels in Upper Klamath Lake necessary to support the cwaam and koptu sucker fisheries, irrigation deliveries to the Klamath Reclamation Project farmers, flows in the Klamath River below Iron Gate Dam for coho, deliveries to the Tule Lake and Lower Klamath

ath Wildlife Refuges, and off-Project agricultural and ranching. There is simply not enough water to fulfill all of these demands at the necessary levels.

The disastrous effects have been real and concrete. There have been devastating fish kills in the Klamath River and near collapse of these fisheries. Low water levels in Upper Klamath Lake and low flows in Klamath River also resulted in an almost complete cessation of water deliveries to the Klamath Irrigation Project, eventually leading to \$40 million in disaster relief funding for irrigators.

In 2006, the perilous condition of Klamath Chinook salmon stocks precipitated severe restrictions on ocean salmon harvest along the Pacific coast. This was catastrophic for coastal communities and even more disaster relief funds had to be dispersed because there was no management plan in place for the Basin.

Hundreds of millions of dollars has been spent in federal and state disaster relief resulting from closed fisheries and losses to farmers and ranchers. Clearly, the status quo is costly to the federal government, states, local economies, tribes and families. We now have a historic opportunity to put these conflicts and catastrophes behind us. After years of contentious litigation, many of us in the Basin realized that a collaborative approach was necessary and began negotiations. These negotiations led to the delicate balance of needs and compromises within the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSa). The Klamath Tribes General Council, which is composed of the eligible enrolled members and is the governing body of the Tribes, by referendum vote, approved the KBRA and KHSa in 2010, and the amendments to these agreements in 2012.

The Agreements strongly emphasize ecosystem restoration, reintroduction of salmon and steelhead, equitable distribution of limited water resources and economic development. For the first time, energy and resources will flow to solve the foundational problems.

*Key elements of these agreements for the Klamath Tribes include:*

- Removal of the lower four dams on the Klamath River, including the Iron Gate, Copco 1, Copco 2 and J.C. Boyle dams.
- Funding to the Klamath Tribes for (1) aquatics and uplands management, (2) the implementation of specific ecosystem restoration and monitoring projects, and (3) economic development studies.
- Decreasing and capping use of water within the Klamath Reclamation Project, while also providing predictability for Project farmers.
- Tribal land restoration of 90,000 acres known as the Mazama Forest.

This last point is essential. Like the other settlement parties we seek economic stability, but it will be decades before the Klamath Tribes will see the full benefit to our fisheries stemming from dam removal and the restoration and reintroduction activities. Therefore, one of our key bargained-for benefits in the KBRA is re-acquisition of former reservation lands, the 90,000-acre Mazama Forest. Tribal ownership of this tract will put both Tribal members and non-Indian people to work in forest products, one of the area's traditional economies. Our development plans revolve around green energy production closely linked to improved forest health and reduced danger of catastrophic wildfire. Reacquisition by the Klamath Tribes of the Mazama Forest not only begins to restore the Tribes' land-base and homeland, it begins to create acceptable parity among KBRA participants, establishing a balance that enables the Klamath Tribes to agree to other core elements of the KBRA.

While the KBRA and KHSa represented a giant step forward toward healing the Basin, more work remained. Senator Wyden joined with Senator Merkley, Congressman Greg Walden, and Governor John Kitzhaber, calling for the creation of a Klamath Basin Task Force comprised of the various stakeholders. Recognizing the shortcomings of litigation, the Klamath Tribes pursued settlement opportunities that could address more than water quantity and began negotiations with the Upper Basin irrigators, the State of Oregon, and the United States to resolve Upper Basin water issues as contemplated in the KBRA. Consequently, we set aside our differences and found the common ground to reach the Upper Klamath Basin Comprehensive Settlement Agreement (UBA). The Klamath Tribes General Council approved, by referendum vote, the UBA, which I signed on April 18, 2014. This was an extremely difficult decision for the General Council in part because of the immense time pressures associated with the accelerated negotiation schedule and the legislative process we now face. With that understanding, I am confident, however, that when Congress enacts S.2379 into law and as we begin to implement these historic agreements the Klamath Basin will continue the healing process and these agreements will provide a foundation upon which the Klamath Tribes can achieve our goals.

In short, the UBA enables the Klamath Tribes to design programs to improve riparian habitat and water quality, support existing fish populations, enable restoration and reintroduction of salmon and steelhead, and provide a foundation for Tribal economic development, while resolving litigation among agreement parties.

*Specifically, the UBA meets the following Tribal goals:*

- Goal 1. Broaden support for the enactment of the KBRA and KHSA.
- Goal 2. Permanent improvement of in-stream flows protected by the Tribes' timeimmemorial in-stream water rights.
- Goal 3. Resolution of Klamath Basin Adjudication claims and contests.
- Goal 4. Restored, functional aquatic ecosystems.
- Goal 5. Restored abundance of treaty resources, and opportunities for harvest.
- Goal 6. Support for the Tribal economy through reacquisition of former reservation lands and forest health restoration.

Like the other parties, the Klamath Tribes had to compromise to reach this important milestone. For instance, in exchange for the benefits flowing to the Tribes under these agreements, we agreed to forgo breach of trust claims against the United States if all the terms of the Agreements are satisfied. Although we hold the most senior water rights in the Basin, we agreed to share in the shortages with our neighbors. We saw these as necessary steps to fulfill our duty to the future generations of Klamath People, so that they may have economic opportunities and know the fish as well as our other treaty resources that form the basis of our Klamath culture and way of life.

The Klamath Tribes will be paying close attention as this legislation as it moves forward. We expect that Congress will respect the hard-fought negotiations and the agreements the parties have reached, but our history shows that we can never take that for granted. We will be monitoring the legislative process to ensure that the Klamath Tribes' bargained-for benefits remain intact. As directed by the Klamath Tribes General Council, one condition critical to the UBA becoming final is that the Klamath Tribes must review the final legislation and notify the Secretary of Interior that the legislation is "materially consistent" with the UBA. If the legislation is not materially consistent with the UBA, the agreement may be terminated, a situation that would be bad for all parties.

Should Congress fail to enact legislation implementing the three Klamath Agreements, such inaction will only guarantee continuing conflict, economic calamity, and more of the types of disasters that have already cost the federal government more than \$100 million in short-term relief. Parties to the Klamath Agreements have worked hard to develop a locally-based, consensus solution that resolves the fundamental problems associated with the Basin's limited supply of water. It is imperative that Congress act quickly, as the delicate balance of bargained-for benefits negotiated in the compendium of Klamath Agreements needs to begin before they either expire or wane under their own weight.

This concludes my opening statement. At this time I request that my testimony be entered into the record. It is my understanding that the hearing record will remain open for an additional two weeks so that the Klamath Tribes may submit additional written comments in support of this legislation and respond to any question raised in today's hearing.

Chairman Schatz and Senator Wyden, I thank you, the Committee, and your staff for the efforts to restore the Klamath Basin and for holding this hearing. I welcome any questions you may have.

Senator WYDEN. Mr. Gentry, the thank yous are really owed to you with dignity and passion and always doing your homework. You have been such a forceful advocate for the tribes. Every time we've had these discussions your voice at the table has helped to bring people together.

So we are very, very proud to have you here. I personally am honored to know you.

Mr. GENTRY. Thank you, Senator.

Senator WYDEN. I thank you.

Mr. GENTRY. I would respectfully acknowledge that I'm the voice of my people. I'm only speaking what my people have told me to speak. I'm only doing what they want me to do. They voted for these agreements. They want this to happen.

I hear the voice of our elders, some of which would say, it's time to forgive those that have trespassed against us and move forward. That's truly the heart of our people. I'm thankful for it.

Thank you, Senator.

Senator WYDEN. Very well said.

One of your terrific partners, the voice of the Upper Basin in the Klamath is Becky Hyde. She and her family have been there for many years and because of Ms. Hyde's good work we've got an opportunity to keep them there and for your son sitting there in the front row to have the kind of opportunities that your family has had.

So Ms. Hyde, we're glad you're here. Please proceed.

#### **STATEMENT OF BECKY HYDE, THE UPPER KLAMATH WATER USERS ASSOCIATION**

Ms. HYDE. Thank you.

Chairman Wyden, Ranking Member Heller and Senator Merkley, on behalf of the Upper Klamath Water Users Association I want to thank you for the opportunity to testify in support of S. 2379. We, in the Upper Basin, are grateful for your leadership, Senator Wyden and also yours, Senator Merkley and are thankful that Senator Feinstein and Senator Boxer have also participated in signing onto this. We urge Congress to enact this vital legislation this year.

I want to say that I appreciate Don's comments. They are heartfelt to me as well for the years of work that have gone into these agreements to reach this point. I appreciate them. Thank you.

Upper Klamath Water Users works for power, water and regulatory security through settlement for family farms and ranches that irrigate in the tributaries above Klamath Lake.

I ranch on the Sycan with my husband and 4 children and we also run cattle on the Upper Williamson which has stayed in our family for 103 years. I am happy to have my 14-year-old son, Jack, here with me today. Enactment of this legislation, not only will help advance the economic interests of the region today, but will give Jack, if he chooses, and the next generation of family farmers and ranchers an opportunity to build a future in the area that we all call home.

Unfortunately as you know, the Klamath Basin has been known for its water crisis, not for the healthy food that hardworking families grow, our amazing wildlife refuges or the Tribes whose ancestors have lived in our Basin for thousands of years. This bill represents well over a decade and a half of work by diverse stakeholders to try and find durable solutions that protect our economy and our natural resources.

If you enter a potato shed in Malin or come to a branding in Beatty, which we would love to have you do, or watch trucks in Modoc Point being loaded with premium quality alfalfa hay headed to dairies that produce milk for this Nation, you get a feel for an economy that is working. However, that economy only goes to work if we have statesmanship, leadership and partnership from our Federal Government. Our agricultural leaders have become experts, not just in how to grow crops or handle livestock, but in how to navigate our relationship with various Federal mandates that af-

fect hundreds of farm and ranch businesses where I live and work every day.

We understand the Federal Government's tribal trust relationship and how that, in turn, affects our ability to irrigate.

We understand the mandates for us to create a healthy environment for fish along our streams, to provide protection asked for the Endangered Species Act and the Clean Water Act.

We ask the Senate to pass this legislation so that our businesses can thrive while we comply with laws that this country has required of us.

We ask for accountability and an investment by the Federal Government in this settlement.

In turn, our communities will leverage a much larger and sustained economic return for this Nation from the families in our Basin, like mine, and like Don Gentry's and like Roger Nicholson's, who are proud to do the hard work that keeps our communities whole. That's what we love to do. Work.

We also commit to delivering the protections to the environment that is asked of us in a way that, I believe, few river basins in this country are prepared to do.

This settlement represents common people. Tribal members, farmers, ranchers, government workers, conservationists, philanthropists, scientists, many of them are sitting behind me, bringing the best of themselves to this work over years and living by the Golden Rule.

This settlement deserves to be cherished. It took decades of hardship, thousands of hours of work and personal sacrifice to reach this point. Please join us in the simple goodness that brought us to this day where we choose to look beyond what divides us toward a future for our children.

Thank you again for inviting me to testify. It is an honor to be here.

[The prepared statement of Ms. Hyde follows:]

PREPARED STATEMENT OF BECKY HYDE ON BEHALF OF THE UPPER KLAMATH WATER  
USERS ASSOCIATION

Chairman Schatz, Ranking Member Lee, and Members of the Subcommittee:

On behalf of the Upper Klamath Water Users Association, I want to thank you for the opportunity to testify in support of S. 2379. We in the Upper Basin are grateful for the leadership of Senator Wyden, Senator Merkley, Senator Feinstein, and Senator Boxer for introducing S. 2379 to stabilize the economy of the Klamath Basin. We urge Congress to enact this vital legislation this year.

We work for power, water and regulatory security through settlement for family farms and ranches that irrigate in the tributaries above Klamath Lake. I ranch on the Sycan with my husband and four children. We also run cattle on the Upper Williamson, which has stayed in our family for 103 years. I'm happy to have my fourteen-year-old son Jack here with me today. Enactment of this legislation not only will help advance the economic interests of the region today, but will give Jack if he chooses and the next generation of family farmers and ranchers an opportunity to build a future in the area we call home.

Unfortunately, the Klamath Basin has been known for its water crisis, not for the healthy food that hardworking families grow, our amazing wildlife refuges, or the Tribes whose ancestors have lived in our basin for thousands of years. This bill represents well over a decade and a half of work by diverse stakeholders to try and find durable solutions that protect our economy and our natural resources.

If you enter a potato shed in Malin, or come to a branding in Beatty, or watch trucks in Modoc Point being loaded with premium quality Alfalfa hay headed to dairies that produce milk for this nation, you get a feel for an economy that is working. However, that economy only goes to work if we have statesmanship, leadership



and partnership from our Federal Government. Our agriculture leaders have become experts not just in how to grow crops or handle livestock but in how to navigate our relationship with various Federal mandates that affect hundreds of farm and ranch business' where I live and work every day.

We understand the Federal Governments Tribal Trust relationship and how that in turn affects our ability to irrigate. We understand the mandates for us to create a healthy environment for fish along our streams to provide protections asked for in the Endangered Species Act and the Clean Water Act. We ask the Senate to pass this legislation so that our business' can thrive while we comply with laws this country has required of us. We ask for accountability and an investment by the Federal Government in this settlement. In turn, our communities will leverage a much larger and sustained economic return for this nation from the families in our basin like mine, and like Don Gentry's, who are proud to do the hard work that keeps our communities whole. We also commit to delivering the protections to the environment that is asked of us in a way that I believe few river basin in this country are prepared to do.

This settlement represents common people, Tribal members, farmers, ranchers, government workers, conservationists, philanthropists, scientists, and others bringing the best of themselves to this work and living by the Golden Rule. This settlement deserves to be cherished. It took decades of hardship, thousands of hours of work, and personal sacrifice to reach this point. Please join us in the simple goodness that brought us to this day where we choose to look beyond what divides us toward a future for our children.

Thank you again for inviting me to testify. It is an honor to be here.

Senator WYDEN. Very, very good to have you here, Ms. Hyde. Nobody, I think, brings the kind of historical perspective you and your family do to this, other than perhaps Don Gentry and the decades and decades of tribal history. So we're glad you two are there at the table.

Another very strong advocate is Mr. Roger Nicholson, a voice for the landowners since we began this debate.

We've had a number of discussions over these years about getting to this point. I think as much of a glass half full character as I am, I wasn't convinced we'd get you at a witness table like this for a bill. But this is a very, very, important day. We are so glad you're here.

Please proceed.

**STATEMENT OF ROGER NICHOLSON, RESOURCE CONSERVANCY AND FORT KLAMATH CRITICAL HABITAT LAND-OWNERS, FORT KLAMATH, OR**

Mr. NICHOLSON. Thank you, Senator Wyden and Ranking Senator Heller and Senator Merkley. It's a pleasure.

I will have comments about the bill itself, but so often we don't give thanks for elected representatives and appointed representatives of our government that really have heart and really take and really get involved in issues. In case I should forget at the end of my comments, Senator Merkley, Senator Wyden and Richard Whiteman, this would not happen without you folks today.

You took heart. You saw people suffer. You did something about it. You provided position and prestige to a settlement that could be, should be and will be everlasting. Thank you.

Anyway. Briefly my name is Roger Nicholson. I come, as Becky does, from a long-term ranching family.

My family came to Fort Klamath in the 1890s. Then into, for perhaps, provide a little bit different perspective. They went into California in the 1930s and the Central Valley as well. They did, like a whole lot of the Upper Basin, is tied to the cattle business.

The vast majority of the Upper Basin agriculture economy is the cattle business and the Central Valley through winter range and the feed lots of Washington and Idaho are all integrately tied in this package and all suffered when we had a water shut down. They all suffered in supply and feed supplies as well as supply of livestock. Hopefully that will be over and we can develop some sense of normalcy.

I have to say and to use some of my friend, Don Gentry's language, collaboration, consensus and compromise. We saw that clear through these discussions. People came to the table and they wanted to settle. They were hard, hard issues to settle. It took hours and hours of discussion.

Hours of work with technical people. We're very fortunate to have somebody that is literally sacrificed family life and so forth with us today and leading our Upper Basin team through this settlement effort and that's Andrae Rabe. I would be remiss in not mentioning her name today. She's just spent countless and countless hours.

Anyway. We look forward to having a whole community again and that is very, very important to me.

I went to high school on the Klamath Indian Reservation. I've had many, many and do have many, many friends, tribal friends. I saw this water issues splintering the community. A sense of wholeness and a sense of community will now be reestablished. That is just huge.

But we very definitely need passage of the bill to move forward. Whatever my groups and I represent the Fort Klamath Critical Habitat Landowners and the Sprague River Water Resource Foundation, two non-profits that represent a diverse group of irrigators in the Upper Basin. Whatever we can do and whatever at point we can do it in this congressional action, please ask and we will be here on short notice.

Thank you for the opportunity. Thank you, once again, for your help.

[The prepared statement of Mr. Nicholson follows:]

PREPARED STATEMENT OF ROGER NICHOLSON, RESOURCE CONSERVANCY AND FORT  
KLAMATH CRITICAL HABITAT LANDOWNERS, FORT KLAMATH, OR

My name is Roger Nicholson. I am here speaking for myself and Sprague River Water Resource Foundation and Fort Klamath Critical Habitat Landowners. These groups have a large number of members in the Upper Klamath Basin, representing thousands of irrigated acres.

I, like others, represent and own a ranch which has been in the family for more than 100 years, which is extremely dependent for economic survival on irrigation water. The cattle business is the largest agricultural industry in Klamath County. Klamath County is one of the top counties in the nation for combined cow-calf and stocker feeder numbers. Without irrigation, the cattle business in Klamath County would diminish to a footnote.

The water shutoff experienced last year, financially and emotionally crippled the entire community. A sigh of relief could be detected over the whole community when a diverse group of negotiators, including myself, announced a settlement had been reached.

The Klamath Off-Project Settlement Agreement has brought together factions within the Upper Klamath Basin who for decades have been at odds over the allocation of limited water resources. The allocation agreed to in the Settlement provides for Tribal fishing and hunting resources, as well as agricultural production. The Settlement establishes the common ground for the communities of the Klamath Tribes

and the agricultural landowners to reunite and work together to resolve water allocation and habitat condition issues.

In the agricultural community, we are excited to move forward on the implementation of the Settlement. This legislation will provide key authorities for Federal participation in the Settlement.

Thank you for your support of S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014.

Senator WYDEN. Mr. Nicholson, you have set a land speed record for giving powerful testimony. We thank you.

Let's go to questions. I'll have a few and then I'm going to ask my partner here in this effort.

Excuse me, we forgot Mr. Whitman. It is only fitting that Mr. Whitman wrap this up because I think all who are at the table appreciate his extraordinary role. I can say, not with a lot of pride, that when this began my knowledge of water law would barely have filled a thimble if you were talking about State water law. Mr. Whitman was essentially our point person for these negotiations, not just from a legal standpoint, but making sure that all the parties were fully informed.

So, Mr. Whitman, it's fitting that you wrap this up. We simply wouldn't be here without you.

**STATEMENT OF RICHARD M. WHITMAN, NATURAL RESOURCES  
POLICY DIRECTOR FOR OREGON GOVERNOR JOHN  
KITZHABER**

Mr. WHITMAN. Thank you, Chair Wyden, Ranking Member Heller, Senator Merkley. Thank you for the opportunity to testify today on behalf of Oregon Governor Kitzhaber. It really is an honor to be here.

I'm pleased to offer the Governor's support for S. 2379.

Chair Wyden, you remarked that this panel and the work of the folks behind us really does represent the Oregon way, the approach of collaboration, consensus, resulting in not the perfect settlement for everybody, but a settlement that is truly lasting and it has stability and that is very much the approach that has been taken in the work that has been done in this community over the last, really, 10 years of effort in the Basin.

The agreements that would be authorized by S. 2379 need congressional authorization. They need your action, your support. But I want to make sure everybody understands that the agreements are in place. They have been signed by all the parties except the Federal parties. They are having an on the ground affect today that is really critical in the Basin.

As you well know and as the co-sponsors for this legislation know, we are facing historic drought on the West Coast of the United States. The Klamath Basin is suffering from that drought as well. Without these agreements in place I am convinced that we would be looking at a complete shutdown of irrigated agriculture, not just in the Upper Basin, but also within the Klamath irrigation project. As a result of these agreements we are seeing sharing of the shortage of water between Coho downstream, between the needs of suckers upstream and between the various irrigation communities in the Basin.

The Klamath is a wounded Basin. It's a seriously wounded Basin.

It was wounded when the dams were put in between the 1920s and the 1960s.

It was wounded when the Klamath Tribe was terminated in the 1950s.

It was wounded in 2001 when the Klamath project was shut down and did not receive any water.

It was wounded again last year when the off project irrigators, just as large an irrigation community as the Klamath project, was completely shut down as a result of water shortages.

The remarkable thing about these agreements is they create the foundation for an equitable sharing among all the different communities in the Basin and the basis for long term healing in the Basin.

Chair Wyden, you mentioned Oregon water law and for those who know Western water law in prior appropriation, it is very much a winner take all approach to allocating a resource. The resource goes to those with the most senior water rights. As you also know, it's our Native American tribes that have the most senior water rights in the Western United States.

These agreements truly are a model that could provide a template for other basins for long lasting, stable, foundations for sharing of water resources in the Western United States in ways that keeps our Native American tribes whole in terms of their rights and that also allows the other communities that rely on water to continue as well.

Chair Wyden, a year ago you gave us a charter for the Klamath Basin Task Force. You, Senator Merkley, Governor Kitzhaber and Congressman Walden and you asked us to do 3 things.

To provide an Upper Basin Water Agreement.

To reduce cost.

To address ways to lower power cost for irrigators.

I'm pleased to report that the Klamath Basin Task Force has delivered on all 3 of those charges. As you've seen we have an Upper Basin Water Agreement that shares the shortage.

On cost we have reduced the estimated cost to the Federal Government from \$750 million to around \$500 million.

On power, we have identified ways forward to provide lower cost power to irrigators both within the Klamath irrigation project and outside of the Klamath irrigation project.

I don't want to mislead you. There's still a lot of work to be done. We are still meeting on a fairly regular basis down in the Basin to do the hard work of implementing these agreements.

We will continue to work together with you to help pass this legislation.

But we have the foundation in place. Now we ask your strong support and ask Congress for the passage of S. 2379.

Thank you.

[The prepared statement of Mr. Whitman follows:]

PREPARED STATEMENT OF RICHARD M. WHITMAN, NATURAL RESOURCES POLICY  
DIRECTOR FOR OREGON GOVERNOR JOHN KITZHABER

Subcommittee Chair Schatz, and members of the subcommittee, I am Richard Whitman, Natural Resources Policy Director for Oregon Governor John Kitzhaber. I am pleased to provide the views of the Governor regarding S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014.

For the last year, I facilitated the Klamath Basin Task Force, which was convened by Oregon Senators Ron Wyden and Jeff Merkley, Oregon Congressman Greg Walden, and the Governor to address three remaining issues facing the Klamath Basin: (1) resolution of remaining water management issues in the upper Klamath Basin; (2) identifying options for lower cost power for the Klamath Reclamation Project and the Upper Basin (off-project) irrigators; and (3) reducing the Federal costs of achieving long-term sustainability in the Klamath Basin.

The Task Force met five times between July 2013 and February 2014, and completed its report following its last meeting. The Task Force formed subgroups to focus on the three issues in its charge: (1) the Upper Basin Water Group; (2) the Affordable Power Group; and (3) the Klamath Restoration Cost Group. The Water Group met almost every week between August 2013 and March 2014, producing an Upper Basin Agreement in Principle in early December of 2013, and a final Comprehensive Upper Klamath Basin Agreement in March of 2014. The other groups, which included members from both California and Oregon, met frequently over the same period. Work to implement the Upper Basin Comprehensive Agreement, to reduce power costs, and other elements of the Klamath agreements continues. A copy of the Task Force Report is appended to this testimony. The appendices to that report, and the Upper Klamath Basin Comprehensive Agreement itself, are available at the Oregon Governor's Natural Resources Office website: <http://www.oregon.gov/gov/GNRO/Pages/index.aspx>.

The recent history of the Klamath basin is a story of hardship falling on specific communities. I began working on Klamath basin issues in 2001, the year that irrigation in the Klamath Project was shut down to protect threatened Coho salmon downstream in California. In 2002, over 30,000 Chinook salmon died in a large fish-kill in the lower Klamath River in California, near the confluence with the Trinity River. And last year, beginning in June, irrigators outside of the Klamath Project—in the Upper Klamath basin—were shut off when both the Klamath Project and the Klamath Tribes exercised their senior water rights.

This year is likely to be one of the driest in the Klamath basin in the last twenty years. State and Federal drought declarations were made months ago, with snowpack in the basin barely over twenty percent of normal. Despite that, because of the Upper Klamath Basin Comprehensive Agreement (UKBCA) and the Klamath Basin Restoration Agreement (KBRA) the very limited water that is available this year is being shared between all of the diverse interests in the Klamath basin including both irrigation communities and in-stream fisheries. Instead of pitting community against community, this year the basin is working together to get through the very tough conditions that nature has presented. Klamath Project irrigators, off-project irrigators, and downstream fisheries are all getting less water than they would like this year. But they are getting what they need to make it through.

The UKBCA and the KBRA have been signed by all non-federal parties, and are partially implemented, providing stability in the basin for now. But this stability will not last unless Congress acts to authorize federal participation in these agreements as well as the Klamath Hydroelectric Settlement Agreement (KHSA). The basin has done its part to overcome conflict, now it is time for Congress to do the same and pass S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014.

Governor Kitzhaber thanks Senators Ron Wyden, Jeff Merkley, Diane Feinstein, and Barbara Boxer for developing and introducing S. 2379. The states of Oregon and California are investing significant resources, including funding, to restore the economic, social and environmental fabric of the Klamath basin. The Governor urges passage of S. 2379 to bring a close to decades of conflict and allow the communities that depend on the third largest river system on the west Coast to heal.

This concludes my written statement. I am pleased to answer questions from the Committee.

Senator WYDEN. Thank you very much.

All of you have been very helpful.

I'll start with a few questions and then ask Senator Merkley to participate as well.

The first is, I think it would be helpful, Mr. Bezdek, if you could break down the Federal costs. In other words, as we've been talking about the fact that the group really drove down those costs beyond, essentially, the original charge. It's been very well received.

Tell us how the costs break down?

Mr. BEZDEK. Mr. Chairman, the bottom line costs are approximately \$500 million of new Federal spending over 10 years. The reductions that got us to that point were made through a combination of taking an aggressive look at current spending levels in the Basin and determining how much of the current spending we can count toward KBRA restoration activities.

We also took a hard look at potential outside sources of funding and some foundations have come forward with that.

The State of California, my colleagues from California, Mr. Laird in the hearing last year, told you that California was completely engaged in these agreements. They have also established that that they are prepared to dedicate \$50 million of the costs that they have set aside for dam removal to help reduce some of these costs.

So I think when you put all of those things in the mix you end up with \$500 million worth of new Federal spending over the next 10 years.

Senator WYDEN. Now earlier this year the United States Department of Agriculture, the Resource Conservation Services, assisted Ag producers in the Upper Basin. Can you describe how they're helping the irrigators and the off project users?

Mr. BEZDEK. They are incredible partners to us.

Let me say, first and foremost, they are a part of our Federal team and they are engaging at all levels. They have formally dedicated, I believe, it is \$11 million over the next 5 years which is absolutely critical as Mr. Whitman established in his testimony, you know, we are implementing these agreements now. The ability to provide resources into the agricultural community to start attaining the restoration actions that are necessary to be able to make more optimal use of water supplies is incredibly important and through our colleagues at the NRCS we are accomplishing that.

Senator WYDEN. Tell us a bit about the wildlife refuges. Senator Merkley and I both have tried to really champion the effort to protect wildlife refuges. How does this legislation help the wildlife refuges in the Basin that are so often literally starved for water?

Mr. BEZDEK. Senator, I think you have to begin with the understanding that, geographically speaking, the wildlife refuges are located very low in the Basin. It is very, very difficult to get them water and because we have a Reclamation project that is not authorized to deliver them water the refuges have historically been able to utilize some of the water that was left over after the Reclamation project was able to make its deliveries because we're beginning—becoming more efficient in how we use water. There's been less and less water available for those refuges.

What the KBRA does is it authorizes Reclamation to deliver water directly to those refuges.

It establishes an allocation of water for those refuges.

Under our projections, based upon our modeling, you know, right now those refuges, most years, are not getting much water, if at all. Under the KBRA the refuges would receive water in 9 out of 10 years that would be sufficient to meet their needs.

Senator WYDEN. So we go from, to make sure we get this. We go from essentially nothing recently to meeting their needs in 9 out of 10 years under this agreement.

Mr. BEZDEK. That is correct, Mr. Chairman.

Senator WYDEN. OK.

One last question for you, Mr. Bezdek, on this round.

The Hoopa Tribe has been, as you know, quite vocal in its opposition to the agreements. They have been making the case that enactment of this legislation would terminate the rights of that tribe.

How would you respond to what that tribe has been saying?

Mr. BEZDEK. Mr. Chairman, I would begin by saying that on a personal level I have tremendous and great respect to the Hoopa Valley Tribe.

I have personally visited with them a number of times.

I've been out to their tribal headquarters.

I've had numerous meetings with their tribal leadership.

We have discussed this issue at great length.

What I would say is is respectfully, we disagree. We do not believe that there is a termination of rights. We believe that under these agreements Hoopa will be able to achieve a water right in California just as it would have if these agreements were not in place.

Second, we're talking about an Oregon adjudication. The Hoopa Valley Tribe's rights are in California. So I believe that as we discuss dealing with the Oregon side of things that their rights are not affected.

I think what Hoopa would argue is that the agreements, when they specify that if the Reclamation project is going to not live within its—as long as the Reclamation project lives within its water budget we will not go after them for more water. They view that as cause for termination. We disagree.

We have done tremendous amount of analysis. We believe that our analysis shows that the amount of water for the fishery will be robust, that we're talking about just a lot of benefits for the tribe.

I guess two more points, sir.

One, we have an obligation to 6 Basin Tribes. This agreement works for all 6 Basin Tribes.

The final point is, in terms of this Administration, we lead by our actions. As it regards the tribal fishery, for the last 2 years in a row we have looked to Trinity Reservoir to make protective releases in order to protect the fishery in the fall. We are in the midst of developing a more permanent program for fall fishery releases.

As it regards the Trinity part of the Klamath Basin, this Administration has significantly increased Trinity Basin funding. So we just respectfully disagree. We believe that this agreement is in fulfillment of our trust responsibility.

We believe that there are substantial benefits for all the Basin Tribes, including Hoopa. We will continue to visit with them and work with them. But when it comes to the use of the word termination we just respectfully disagree.

Senator WYDEN. Alright.

Senator HELLER.

Senator HELLER. Thank you, Mr. Chairman. It's good to be up here with the rest of the Oregon delegation.

Senator WYDEN. Right. One hundred percent of our——

Senator HELLER. One hundred percent.

I'm not an expert on the Klamath Basin, but this is what I believe. I believe if you solve the problems in Oregon we can help solve some of the problems that we have in Nevada. If you'll be patient with me, Mr. Chairman, I'd like to talk about some of the problems that we are having in Nevada.

Senator WYDEN. Very good.

Senator HELLER. That's specific on drought issues.

I want to thank all the witnesses for taking time and being here and sharing us your concerns because these issues are issues of the West. They aren't issues of Oregon, California, Nevada, Arizona, everybody has issues, problems, concerns. If we can solve portions in one area it's certainly going to help us as we solve in other areas.

It's of no loss that we're having big problems in central California and that drought that we're seeing in central California is moving through northern Nevada. Fourteen years now. It's been quite rough.

I live in an agricultural community. The allocation for runoff surface water is zero percent in my community. Just a few years ago it was 110 percent. But it's bouncing around that it's probably averaged over the last 10, 15 years at about 30 or 40 percent.

But I want to talk a little bit about southern Nevada also because the life blood of southern Nevada is the Colorado River. Mr. Bezdek, I'd like to raise some of these concerns with you. After 14 years of continuous and severe drought in the West the water levels at Lake Mead, one of the primary reservoirs in the Lower Basin is approaching its all time low. In fact, I think they're now drilling a third tunnel for water into the Las Vegas Valley.

Since January 2000 that level has dropped over 100 feet. That drought not only impacts the Las Vegas Valley's water supply but it also inhibits recreation. The Lake Mead National Recreation Area, a major economic driver in the region, and threatens fish and hydro power generation at Hoover Dam, a significant low cost power supplier for, not just the State of Nevada, but of course, Arizona and California alike.

Our communities take this threat serious. I'm sure that you do also. We have taken an active role in water conservation. Local businesses, as an example, our casino resorts, local governments have implemented measures to reduce consumption, reclaim and recycle water and to increase efficiency.

Concurrently I've been working diligently here in the Senate to implement policies that support these types of efforts. Over the last couple of months Senator Feinstein and I have teamed up to navigate the Emergency Drought Relief Act, S. 2198, to Senate passage. On Thursday, May 22nd, that bill cleared the Senate by unanimous consent.

I'd like to ask you about a specific provision that I worked on, but I want to ask you first if you're familiar with S. 2198.

Mr. BEZDEK. Yes, sir. I am familiar with certain portions of it.

Senator HELLER. OK.

There is a section, Section 4c7 of the bill that requires the Secretary of the Interior to pursue pilot projects that would facilitate water conservation efforts in the Basin, in Basin states, claimed that increasing the levels at Lake Mead and other regional res-



ervoirs in the Colorado River. Are you familiar with that particular section?

Mr. BEZDEK. Yes, sir.

Senator HELLER. My question is then is how can this authority that's given to the Secretary assist the region in drought relief?

Mr. BEZDEK. Ranking Member Heller, let me begin by simply saying that as we've discussed here in Oregon I think the same is in your great State, relationships. Relationships are the key to getting through these things. We at Interior believe that the relationships we've been able to develop in the 7 Basin States, in dealing with these issues that are of immense importance to you and the other Colorado River States, are what is going to sustain us and creative thinking. They're the same types of things that we've been talking about here in terms of S. 2379.

With regards to, specifically, your questions, we do not have an Administration position yet. I would like to offer to you to be able to get back to you with a specific answer to your question after I go back and confer with some of our colleagues within the Administration, but it's something I would very much like to do.

Senator HELLER. OK. If you could do that I'd appreciate it and I'd add a couple of other questions.

What could be realistically accomplished?

Third, if enacted, what type of projects can the Department implement to improve levels of these important reservoirs?

Mr. BEZDEK. It would be my pleasure, sir.

Senator HELLER. Thank you.

Thank you, Mr. Chairman.

Senator WYDEN. Thank you, Senator Heller.

Senator Merkley.

Senator MERKLEY. Thank you very much, Mr. Chair. Thank you all for your involvement in this incredible enterprise.

It was in 2009 when I came down to the Klamath after my election that leaders from the irrigators and leaders from the tribe came together and said, will you get engaged because we're trying to have a dialog to replace our conflict with a win/win strategy, a vision for the future. I recall specifically that someone in the group said, you know, the only person or persons who are winning right now are the lawyers. That's because we're all paying them from every side of this long battle and that there must be some better future, some better vision.

I thought at the time that the chance of bringing these despaired interests, so long in conflict, together in a common plan would be a miniscule possibility. But I pledged that if succeeded, I would work in partnership with all of you as stakeholders and with Senator Wyden's long experience and leadership in this effort to try to support and take forward the Congressional side of this equation. I, kind of, re-pledge myself to this effort now.

I want to say a special word of thank you to Mr. Bezdek from Interior. Your leadership has been phenomenal in this process.

But I also want to take a moment and say Secretary Salazar followed by Secretary Jewell have been extremely instrumental.

Similarly Mr. Whitman, without your engagement and detailed knowledge on the natural resources side and your facilitation, we wouldn't be sitting here today.

But the key at the heart of this has been the stakeholders that the other 3 panelists are representing. Congratulations for where we've gotten to and Senator Wyden and I are going to do all we can to take this side of it forward.

It was a huge contrast between 2009 when basically the comment was, we're sitting in the room together. We're getting to know each other. We might be able to produce a vision.

Now when you have this very detailed plan, not just a vision, but taking that into a plan which is such a difficult thing to do. The ceremony that we had on the banks of Spring Creek, a tributary to the Williamson and Ms. Hyde, that may be somewhere close to your property, I imagine, on the upper Williamson?

[Laughter.]

Senator MERKLEY. The right tributary to the Klamath, but not too close.

At any rate it was a phenomenal setting, beautiful, beautiful river with mature Ponderosa Pine and just a setting on those banks that had enormous spiritual quality to it and so a very, very good feeling to take us forward.

Indeed the tribe, Ms. Hyde, thank you. Mr. Nicholson, you kept bringing to the conversation additional elements that needed to be addressed and brought us, really, to help produce the third agreement in this series and try to take into account a broader economic perspective for the region. So thank you for bringing that conversation together.

I guess I would like to ask you, Mr. Nicholson, as you wrestled with finding this win/win proposition how you view this from the viewpoint of the ranchers that you have helped represent. How this agreement will work for them?

Mr. NICHOLSON. I think, I think this agreement will work because it does provide albeit at a reduced level, it provides water assurances into the future. But it also provides, as the KBRA did for the Lower Basin people, ESA assurances which are on everybody's mind. But with water assurances we can take the water year and have some type of idea how much pasture we'll have, how many livestock you'll have and you won't see the extremes anymore of, hopefully of, complete shutdown and so forth.

As any business, the startup cost is extremely high. Yet, you have to have continuity. I think this agreement provides continuity. It provides one thing. As I spoke at the settlement on the banks of the Spring Creek, as you had referenced to, it provides hope to the whole community.

I think even more important, it's important to the ranching community to have a good relationship with the Klamath tribe. How we ever went so awry, I don't know. But I think it's just fantastic we're back with normalization of relationships because I grew up there and each and every person there is an important part of that community.

Thank you.

Senator MERKLEY. Thank you.

I was very struck how after 2009 when I first came to this conversation the drought of 2010 came, the worst ever drought. It was the worst than the 2001 drought. I remember a few conversations

with folks saying, well this will either tear everyone apart or make everyone redouble their efforts.

Then what should happen, but 2013 drought. Now this year a small snow pack. So Mother Nature certainly is indicating some urgency that the water resources are going to be challenging and a lot of cooperation is going to be needed to share them to mutual affect.

Ms. Hyde, was there anything you'd like to add to the perspective?

Ms. HYDE. I just want to say that I think this is historic work happening in this Basin. As Senator Heller was here commenting on issues in Nevada, really we have said this for quite some time, but the way we are learning how to deal with the complexities that doing business while protecting the environment—the way we are accomplishing this in the Klamath Basin is unique.

Senator WYDEN. Sure, of course.

Ms. HYDE. It's so important that we figure out how to get this done. So I appreciate it, Senator Merkley.

Again, I appreciate you for stepping up in times like 2010 even really coming in and helping with the drought issues then as well. So, thank you.

Senator MERKLEY. You're welcome.

When Mr. Nicholson spoke of the relationship, I think it was the relationships that were forged in the dialogs that made 2010 so dramatically different than 2001. This process over the last 4 years has simply built upon that foundation.

One of the things I wanted to ask you all about was the Interior has been able to provide some initial funding to help with projects. I believe it's primarily related to the 30,000 acre feet reduction or stream side treatments, etcetera. Would either of you like to comment on how those funds are being utilized and how that process is going forward?

Mr. NICHOLSON. I am probably not the expert on that, but certainly we are appreciative of the funds that were provided. We're just on the ground floor of getting those programs instigated, so specifics.

But obviously a whole lot of things that we're desiring to do is we'd like all the right pertinent areas to be fenced in which there's a good start on that right now. I know in a lot of instances, 100 percent by the landowner themselves. All the way from that to fish screening to there's just a whole array of issues that are being handled on that.

Specifically, the retirement, that's yet to become. We're still putting leases together, lease options and so forth. That is all in front of us. But there's already been probably the 5,000 acre feet of water that was required for this year has already been done with retirements that have happened through various programs since 2001 which are credited to the account, a ledger account, of retirements.

Senator MERKLEY. Thank you.

Chair Gentry, I'll just close with this question. Your tribe has had a very ancient relationship with the forest, certainly with this fish species in the stream, the sucker and the salmon. Do you see

this agreement as one that will strengthen that relationship with both the forest and the fishery?

Mr. GENTRY. Yes, certainly it will. You know, the greens provide for the resources and the strategy necessary, the extensive restoration, necessary to restore our fisheries to address the water quality and habitat issues that affect our fisheries.

There's also opportunity that we have through reacquiring the Mozama Forest, which is a part of our original homeland. This provides a land base for an economic opportunity but also because we'll be bordering the Fremont, mining the forest with our property. The Tribal Forest Protection Act and provides opportunities to partner with the forest to ensure that the adjacent forest is managed in a healthy way, to protect our forests from disease and fire that may burn from the forest onto our properties.

We've spent many years developing that relationship. We have a positive relationship with the forest and master stewardship agreements. We see that we have a critical role in our region to, once again, be a part of forest management. The forest management affects our treaty resources. So we're very concerned about how the Forest Service manages, you know, those properties because it affects big game. It affects our cultural uses.

So certainly, you know, these agreements will help us. There's some funding included in for upland management. We know that we're in the upper part of the Klamath River Basin. So we're not just talking about the streams. We're talking about the forests that affect the hydrology in our region.

We know the structure and function of our forests. Their part is significantly, from what they were historically. It's affected the snow pack and the accumulation of the snow and how that percolates things and recharges our springs.

So we're concerned about the whole region. It ties together. We see that we have a significant role and opportunity through these agreements to make sure that we're doing the right thing for our region.

Senator MERKLEY. Thank you very much.

Senator WYDEN. Mr. Gentry, thank you for making that point to Senator Merkley about the economic development fund. It is part of the Upper Basin agreement. Because I think, based on the discussions that we've had with you, I think not only is this going to create jobs for the tribes. I think it's also going to be good for the whole Upper Basin, you know, community in terms of increasing demand for goods and services.

Mr. GENTRY. Yes.

Senator WYDEN. So, I very much commend you for the efforts that are underway with respect to that economic development fund.

A question for you, Mr. Whitman, that we never covered. We've obviously spent a fair amount of time talking about the Federal costs associated with this, but there are a variety of costs and responsibilities that have been assumed by the non-Federal organizations.

Could you describe what role the non-Federal parties are going to play in completing all the work envisioned by the agreements? I mean, this is part of it with Senator Merkley playing an important role on the Appropriations Committee and now, my chairing

the Finance Committee. One of the first things that comes up is people say, well what are all these non-Federal parties going to be doing in all this.

So if you could explain that, that would be helpful.

Mr. WHITMAN. Certainly, Chair Wyden. I'd be pleased to respond to that question.

There are essentially 3 types of responsibilities that non-Federal parties have to implement these agreements.

First of all with regard to funding which I'll come back and talk about in a minute.

But second and importantly with regard to planning and management of resources, both under the Klamath Basin Restoration Agreement and under the Upper Basin Comprehensive Agreement there are mechanisms for collaborative efforts to plan and prioritize the work in terms of restoration of resources that will be efforts that are not going to happen overnight. They're going to take a long time to do.

Again, just underscores the importance of the long term relationships that have been built through this process.

Then finally in terms of implementation, the Klamath Tribes will have a central role in working on the restoration work in the Upper Basin and tribes in the Lower Basin also will be participating actively in the work in the Lower Basin along with the states of both Oregon and California.

Let me come back to the funding question briefly because I think that was the main part of your question.

Under the structure of the Klamath Basin Restoration Agreement and the work recently completed by the Klamath Basin Task Force, total funding by the states of Oregon and California is \$83.4 million.

In addition to that there is, through ratepayers of PacifiCorp, an additional \$200 million.

Then on top of that is the California Bond Measure that's been referenced that pays for a portion of the dam removal cost as well and was mentioned in earlier testimony. To the extent some portion of that \$250 million is not needed for dam removal, California, the Governor's Office in California, has agreed to support expenditure of at least, of up to \$50 million of that amount for restoration work in the Lower Basin.

Then finally, PacifiCorp is putting in on order of about \$28 million in terms of work toward implementation of various actions implementing these agreements.

So the total, by my tally, for non-Federal parties involved in this effort is around \$560 million coming from non-Federal parties. That amount does not actually include some recently committed funds from the State of Oregon to help with some of the bridge financing to get these programs going.

So actually as we are sitting here today we are also working on our budget proposal for the State of Oregon for the next biennium. We are in the early stages of developing proposals for additional funding from the State of Oregon.

So the State of Oregon is a strong financial and planning and implementation partner on both of these agreements as is the State

of California, as are the tribes and as is PacifiCorp. It is truly a group effort to get this done.

I haven't mentioned the irrigation community, but obviously a lot of the on the ground work that Mr. Nicholson alluded to and Becky Hyde has talked about also will be done by ranchers and farmers in the Basin working on their land.

Senator WYDEN. I'd be interested in, especially. Mr. Bezdek, we'll kind of liberate you on this question. We won't grill you on this, but you 4 tell us a little bit about what has made it different this time.

Why we have a consensus because I look back on this and so fortunate to have Senator Merkley doing good work on this. I remember back when, feels like, when I had a full head of hair and rugged good looks, we got, on a bipartisan basis, we got more than \$100 million in the Farm bill in the U.S. Senate to send to the Basin. Somehow for a variety of reasons, parties didn't agree.

Then in the House of Representatives they wouldn't do it. There we were. No resources for a lot of the kinds of things we're doing.

So, this is different. It's exciting in that respect. Senator Merkley and I have talked often about that day almost a year ago and, sort of, the surprise on your faces when the two of us called that audible and said we'd like you to stick around. Cancel those plane flights and see what we can do to turn this around.

You did it by cutting the cost.

You did it by getting it done by the end of the year which was the time table in the Upper Basin, all these factors.

But tell me a little bit, in terms of the discussions you had, because I know it was meeting, after meeting, after meeting.

Why was it different this time? I know what the papers have said. The papers said when we started oh, there's possibly the prospect of violence. It's so dry and the like.

But I'd be interested as we wrap up for you four, especially because we really do see this as a model for the West. Tell us what's different.

Maybe we'll start with you, Mr. Gentry, because of, certainly, what was different this time was those court decisions which, as Mr. Whitman noted, were very much in favor of the tribes. The tribes could have said, that's that. You know, won in court and the end.

You sure stepped up and said we've always been part of this community. We want something bigger. We want something better. We want to come together.

So that was sure different.

But to start with, just as we wrap up and I want to give Senator Merkley the last word. But tell us why this is different this time.

Mr. GENTRY. Our leadership, as you know, have long supported concept of settlement because we've realized that the issues affecting us were more than just water quantity. So we were there ready to move forward with that. As you pointed out, you know, in the administrative, State administrative, process and adjudication our rights becoming quantified and therefore enforceable at that time was, I think, key.

Really pointed that we really needed to work together to find a solution. So I think that helped. Definitely provided that oppor-

tunity and really brought forth the seriousness of the situation that we were contending with. So I think that was one of the key issues there.

We have made several attempts over the years to reach settlements. Things like the 2001 water shut off, kind of, blew things out of the water there.

But things came together in many respects. I know we've been tired of spending the money, you know, in litigation. Standing across the courtrooms, you know, looking at each other with our—

Senator WYDEN. So it was just like lawyers that pulled this together?

[Laughter.]

Mr. GENTRY. I mean.

Senator WYDEN. I'm kidding.

[Laughter.]

Mr. GENTRY. No.

Senator WYDEN. Sort of.

Mr. GENTRY. Yes, certainly.

But, you know, we know it's better to work together, you know, as neighbors to honor and respect one another, you know. That those moral values that I think that are universal, you know, to love our neighbor. You know, that's been a core principle and moral and a value of our people, you know.

But the foundation of that has certainly been the interest of our people to have our homeland restored and to protect and provide their resources. So I really think the other parties realizing how important those resources are to us, our fisheries. I think that's been helpful. There's been a level of respect and honor for one another that's developed both ways.

When you sit in a room with people and you break bread, you know, which we did several times and numerous times over these meetings, you come to find out that you have real similar goals and perspectives. Just as agriculture and that type of economy is important to many people in our Basin to teach values and to provide a way of life for their families and their people, the same way our hunting, fishing, gathering, those values and our way of life are important to us for sharing and teaching and important to our young people so they know their place in our own community.

So I think honor, respect, friendships have developed over good food.

We have to thank Cheri Little for the many things, the sweet treats she brought to us over the meetings. But those things have been helpful.

The commitment of the Federal team has certainly been there. Richard the commitment there has been instrumental in helping us achieve what we've achieved. So thankful for all that.

So it all came together, a commitment of the folks that could dedicate the resources to help us through this, the commitment of our people to work together, helped us get there.

Senator WYDEN. Well said.

Ms. Hyde, Mr. Nicholson, what was different this time, in your view?

Ms. HYDE. Senator Wyden, first I want to say thank you for coming back to the Klamath Basin. I appreciate the fact that you did come in 2001 and also Governor Kitzhaber.

I think what's different this time is that we learned a lot about what the issue was, what the scope of the issue was, how it was Basin wide. It didn't just deal with issues up where we live in the tributaries of the Upper Basin, but it's an issue that needed a Basin wide solution. So that's part of it.

I would say coming from a family that settled on former tribal land, tribal allotted land, we had some issues to deal with that are, you know, 150 years deep, some of the wounds, some that Richard Whitman was talking about. We had some trespasses that needed to be dealt with. I think that there's an acknowledgement of the importance of how we choose to live with one another in a community rather than being scared of each other, we meet with each other and we talk with each other.

That has happened with key relationships that have been developed in the last decade across the Basin. So I would not hesitate when flows in the river get drastically low this summer to call Troy Fletcher from the Yurok Tribes on the phone. Troy, it's so dry here up on the Sycan. It's good wading weather for small children, but it's not very good for fish. We have those kinds of relationships to pick up the phone.

Don Gentry has amazing basketball star grandchildren living and I follow them.

Senator WYDEN. I've always felt that basketball was the answer.

Ms. HYDE. Basketball is part of it, appreciating the amazing talent of your neighbors. It's friendships. It's communication.

It's what we need to be doing all over the place in this country. Reaching out to those people that are the hardest for us to get along with, building those relationships, making those calls, sitting in those rooms for 8 months with Richard Whitman and John Bezdek, who frankly flew out West so many times that his family probably doesn't hardly recognize him anymore. Those are what matters, all these.

You matter. Senator Merkley matters. All the people who are sitting here matter. It's a choice whether we get together with one another and deal with these things.

It's also important to acknowledge how complicated it is when you're dealing with these many issues to come to a solution. There is great complexity involved in this settlement. It will be our responsibility to try to help with these sort of issues in other places because we can.

But it's pretty simple. It has a lot to do with basketball and addressing the sins of your fathers.

Senator WYDEN. Mr. Nicholson? Ever thought you'd be here?

Mr. NICHOLSON. I've been hopeful for years we'd be here. We've worked toward that goal. But it seemed like that the pieces didn't fit together.

Unfortunately one thing about human behavior sometimes that you really don't truly address problems until the very, very adversity sometimes spells success. Perhaps we hit rock bottom realizing that we had nowhere to go but up. I think that a big component



and not to belabor the point was the involvement with prestigious people like yourself.

But I might add something too. We're really on our formative years of a multiyear settlement agreement. We can't be left without your involvement into the future as well as passing the bill.

We need Richard Whitman. We need his future involvement.

We need John Bezdek. We desperately need him to go forward.

I think part of the reason that it worked now and it will work into the future though, is a lot of the goals that we want are the same. Most of my community are long term agricultural people. They want the best for the resource.

They want for the best, not only and I think restoration sometimes is a misnomer because, for example and I'll have to pat myself on the back on a tour with the Tribal biologist recently. He said, Roger, you have one of the best managed riparian areas I've ever seen. My question back, how can it be improved.

That's enhancement, not necessarily just strictly restoration and working together I think we can accomplish those goals. But those of us in agriculture, their land, like the tribe's land and desire for land, is their life. If they are shown the path or suggested a path to take to make it even that much better and this agreement, perhaps, can do that, it will succeed.

Thank you.

Senator WYDEN. Mr. Whitman, what was different?

I know one thing was different. We never had a lawyer who played the role that you did. We had plenty of lawyers involved, not just the lawyers for the various parties. But we didn't have one person who meeting, after meeting, after meeting, when people felt things weren't going to work, bringing people back together. So I know that was something was different.

But in your view, you've been doing water law a long time. Why has this been different?

Mr. WHITMAN. Thank you, Chair Wyden.

Stubbornness, food and good relationships are really critical.

Senator WYDEN. Sounds like a law firm, stubbornness.

[Laughter.]

Senator WYDEN. Food and good relationships, attorneys at law.

Mr. WHITMAN. Yes.

You know, I was actually involved behind the scenes in 2001 when we had litigation flying over the shutdown of the Klamath project and worked again behind the scenes, off and on, over the years leading up to your re-engagement of all of us in chartering the Klamath Basin Task Force a year ago.

My perception in these situations is when you have a setting where there is a great degree of legal uncertainty and you have enormous stakes on all sides and you have, frankly, lawyers, you know, I'm one too, who are advising their clients that there's uncertainty and they should make a try at winning it all. That is not conducive to collaboration and consensus and that was where we were in 2001.

So a lot of the story here is simply working through issues and getting people to the point where there is enough certainty so that people are all ready to come to the table. Then you get to stubbornness and food and good people to seal the deal.

Senator WYDEN. Let's do this. I'm going to give Senator Merkley the last word, but apropos of your point, Mr. Nicholson, about the fact that a lot of sweat equity has gone into this already. We can't give up.

I can tell you, you've got Senator Merkley and I at hello on this. I mean, we have watched you all, not just from the period of, kind of, June on when we set that end of the year date, but literally, for me, since 2001, for Senator Merkley from the day he came to the Senate. We think this is vital to the Basin.

I hope people, as you wrap up today, reflect on what Mr. Whitman said economically would happen without this agreement. I mean, Mr. Whitman said it would essentially be calamitous. It would be calamitous in the Basin within affect thousands of jobs at stake, in agriculture, in fishing, in a variety of industries without this agreement.

So we heard him say that a long time ago. But I think it's worth saying it again and that just reaffirms why Senator Merkley and I are so committed to getting this done.

It will go to this committee which I used to Chair a bit ago. After that it goes on the Odyssey, what was once described as the dance of legislation in a book. Senator Merkley will be playing a key role on the Appropriations Committee. I'll have an opportunity to try to assist on financial issues as Chair of the Finance Committee.

So you have our pledge today, apropos of your point, Mr. Nicholson. We're very much aware that we've got a long way to go. But it would be legislative malpractice to not follow this up every step of the way to get this passed and then to ensure its implementation.

People have learned a lot about implementing laws here in the last, you know, few years and just because you get something signed, doesn't mean you're done. So I'm really pleased of such a good partner up here in this effort.

The last word is Senator Merkley's.

Senator MERKLEY. I remember that book the Dance of Legislation.

Senator WYDEN. Yes.

Senator MERKLEY. The bill of question did get completed. So that's a good, good, good reference.

Today we have stakeholders who are connected to the third agreement. But I just want to note that there are many other stakeholders who've been involved in this broader vision, the Yurok Tribe, the Karuk Tribe, conservation groups, PacifiCorp and just a whole variety of interest including fisherman from the ocean side, the ocean side of fisherman, because of the fish runs.

So, congratulations. I look forward to continuing to work in partnership with all of you toward this vision.

Thank you.

Senator WYDEN. Senator Merkley, thank you.

Just one last point.

Today we obviously focused on the final push from the Upper Basin. On the Upper Basin agreement many stakeholders to the prior agreements have submitted testimony for today and this committee has their testimony from this round table last year. We will ensure that that's considered as we go forward.

Also we're going to keep the record open for 2 weeks to receive any additional statements or testimony.

With that, we thank our guests and the committee is adjourned.  
[Whereupon, at 4:03 p.m. the hearing was adjourned.]



## APPENDIXES

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### APPENDIX I

#### Responses to Additional Questions

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##### RESPONSES OF JOHN C. BEZDEK TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* Aren't there other ways to achieve the goals of the agreement other than removing the dams—albeit more expensive? Are we not simply letting PacifiCorp off the proverbial financial hook?

Answer. The alternative of leaving the four dams in place and retrofitting them for fish passage and fixing the water quality and water temperature problems created by the two larger reservoirs (Iron Gate and Copco 1) would indeed be expensive (totaling in excess of \$460 million dollars over the term of a new license) and is not likely to provide the same benefits to natural resources or the communities that depend on them. PacifiCorp estimates indicate that the cost of removing the dams under the agreements and developing replacement power is comparable to the potential costs associated with FERC relicensing. However, as the Oregon PUC concluded, the cost of mitigation measures associated with relicensing are difficult to estimate and will likely escalate over time, creating a high degree of financial risk for PacifiCorp's customers. In contrast, dam removal under KHSA caps liability and thereby provides risk protection for PacifiCorp's customers. Therefore, these agreements aim to protect electricity ratepayers from escalating costs and financial risks, rather than providing any parties with financial relief.

The Environmental Impact Statement (EIS) prepared for the Klamath Secretarial Determination examined a range of alternatives in detail, including an alternative that analyzed leaving the dams in place and constructing fish passage. While this alternative was estimated to improve on the status quo (i.e. no fish passage), the EIS analysis projected that more benefits for fisheries and local communities would accrue when the dams were removed under the agreements. Removing dams is anticipated to open up 420 miles of stream habitat currently blocked by the dams, immediately reverse water quality and water temperature problems, improve river processes for fish, and maximize fish migration success through a free-flowing river. Retrofitting upstream and downstream fish passage would involve expensive technology with uncertain costs. Furthermore, the removal of dams would immediately relieve the conditions causing toxic algae blooms in Copco 1 and Iron Gate Reservoirs and thereby would immediately reduce public health risks. A problem with keeping the dams in place is that it would take decades to reduce incoming nutrient loads in order to control these algae blooms.

It is important to note that the KHSA and the KBRA were negotiated as a single package and they cannot be easily separated. The bargained-for-benefits, and the concessions made by parties, span across the two agreements. For example, important water-sharing concessions in the KBRA were made in order to accrue the fishery benefits from dam removal. Without dam removal as part of the agreement, the future of the stakeholder coalition to implement an agreement would be very uncertain and it is highly unlikely that the KBRA as it currently stands would be or could be implemented. For example, the interim assurances that the Klamath Tribes will not make water rights calls against the Klamath Reclamation Project will not become permanent until and unless several conditions, including removal of the four dams, are in place.

*Question 2.* The appendix you provided seems to make strong case for removing the dams from your perspective. I note it includes no information on what the negative impacts of dam removal would be. So, two questions:

- a. Are there any negative impacts?

Answer. Yes, the EIS, testimony, and appendix you referenced identified a number of negative impacts associated with dam removal. Under NEPA and CEQA, significant environmental effects that cannot be avoided by redesigning the project, changing the nature of the project, or implementing mitigation measures must be disclosed in an EIS/EIR. CEQA Guidelines (Section 15126.2 (b)) require discussion of significant environmental effects that cannot be avoided, as well as significant environmental effects that can be mitigated but not reduced to an insignificant level. NEPA regulations also require a discussion of any adverse impacts that cannot be avoided as a result of the Proposed Action (40 Code of Federal Regulations Part 1502.16). Klamath dam removal is a proposed restoration project, and it was carefully designed to minimize adverse effects. Hundreds of impacts and benefits were analyzed, mitigation measures to address the remaining impacts were proposed, and analyses went through multiple phases of peer review to increase certainty of conclusions. Consistent with this direction, the Klamath EIS fully analyzed these impacts and potential mitigation measures. The majority of these negative impacts identified in the EIS/EIR and the appendix are expected to be either mitigated for, or they will be somewhat off-set by long-term benefits of dam removal and KBRA implementation.

Below are some of the larger impacts of dam removal; some have proposed mitigations, some are offset by longer term benefits, and some are not mitigated for:

- A total of 668 land parcels near Copco 1 and Iron Gate reservoirs (including 127 with homes) that either have water frontage, water access, or views of reservoirs would potentially lose views and access. We have proposed that making some form of remediation for these potential losses be included as part of the overall costs of dam removal, so that these effects would be mitigated for.
- Release of high concentrations of sediments following dam removal would cause some mortality of adult and juvenile salmon, but basin-wide mortality is expected to be less than 10 percent for this year class of salmon, even under worse-case conditions (dam removal in a dry year). Worse-case basin-wide mortality would be around 28 percent for this year class of adult steelhead. Mortalities of salmon and steelhead would be much lower in successive years. The timing of reservoir drawdown, from early January through mid-March 2020, was chosen to maximize fish mortalities associated with dam removal. Although, some sediment-related mortality is unavoidable in the short term, in the long-term dam removal and KBRA implementation would benefit salmon and steelhead populations.
- Dam removal would also result in the loss of about 70 jobs associated with the operation and maintenance of the dams and changes in the recreational industry. This job loss would be significant. An aggregate view of jobs in the region; however, shows that net employment would increase under the agreements because of the creation of many fisheries and construction jobs, and because water-sharing provisions in the agreements would save farming and ranching jobs that would otherwise be lost.
- Long-term flood risks would increase slightly for about 18 miles downstream of the location of Iron Gate Dam. About six structures (e.g., homes) currently outside the 100-year flood plain would be located within a new 100-year floodplain following dam removal. Planned mitigation measures for willing and eligible landowners could include moving, modifying, or elevating structures where feasible.
- Dam removal would eliminate about 82 megawatts of hydropower in 2020. PacifiCorps would continue to service customers in this area with replacement power developed prior to 2020.
- In 2020, approximately 526,000 metric tons of carbon dioxide equivalents (MTCO<sub>2e</sub>) per year would be emitted to the atmosphere from replacement power assuming PacifiCorp's current resource generation mix. Though this impact is difficult to avoid, it could be reduced 14 percent if PacifiCorps meets California's goals for future resource generation mix.
- Dam removal and reservoir drawdown could affect Native American cultural resources sites currently submerged beneath the reservoirs. Human remains may be associated with these sites. The Department would work closely with the appropriate tribes to ensure that this issue is handled in accordance with all applicable laws and with the dignity and reverence that such an important issue demands.

b. Can we assume that if the legislation passes, the Secretary will proceed with an affirmative decision to remove the dams?

Answer. Secretary Jewell has not made a decision yet on dam removal. Much of the background work necessary to inform the Secretary's decision has been completed by Federal agencies and others. This work includes a comprehensive list of technical and scientific studies that have undergone rigorous technical review by independent experts and the public. These studies and their respective summaries are available at [www.klamathrestoration.gov](http://www.klamathrestoration.gov).

*Question 3.* What specific performance measures will the Department put in place after the dam is removed to ensure the goals outlined in the appendix are achieved?

Answer. The referenced appendix lists the key outcomes expected from removing the four Klamath River dams and implementing the Klamath Basin Restoration Agreement (KBRA). Some of the expected outcomes include improvements to water quality, stream-flow patterns, and the expansion and restoration of fish habitat. In the long-term, these changes are expected to increase production of salmon and trout populations as well as increase harvest opportunities for commercial, Tribal, and sport fisheries. Restoration actions as called for in the Klamath Agreements will be intensively monitored by a team of conservation partners to track how these expected outcomes are being achieved. This team has recently begun developing a fisheries restoration and monitoring plan, which will be used to identify how restoration goals are being met. This plan is being co-authored by the Klamath Basin Fish Managers, consisting of representatives from state, federal and Tribal agencies.

Data and information from this monitoring effort will be shared with Fish Managers and will be used to inform restoration decisions and assist in adaptively managing what types of restoration actions are needed and where they are most needed. Many of the specific performance measures and monitoring plans are still being developed, but as stated in the KBRA, the Fish Managers team will be tasked with developing the Fisheries Program, which includes a fisheries reintroduction plan, a fisheries restoration plan, and a fisheries monitoring plan. The Fisheries Program will establish metrics to evaluate program progress. The metrics will consider and integrate the four parameters for evaluating fish population viability status, including: abundance of fish, population growth rate, genetic diversity, and population spatial structure (geographic distribution). The Monitoring Program in the KBRA is expected to be particularly robust and will provide data to specifically track these metrics and to ensure restoration plans are being adaptively managed to maximize success. After the monitoring plan is developed, periodic reviews will allow for appropriate adjustments to ensure restoration actions are being adequately tracked and performance measures are being met. The Monitoring Plan components are as follows:

1. Status and Trends Monitoring: This monitoring would improve upon current salmonid (salmon and trout) population monitoring efforts crucial to the management of commercial, sport, and Tribal fisheries, and will also help establish a set of benchmark conditions prior to dam removal for a number of aspects of the Fisheries Program. This will be a key tool for management of the implementation of KBRA and will help managers determine whether restoration actions are benefitting the fishery at the basin scale.

2. Effectiveness Monitoring: Once the KBRA is implemented, dozens of restoration programs will be implemented each year for a period of 15 years. Effectiveness monitoring is intended to assess the performance of individual restoration actions and the restoration actions together on broader scales. We anticipate that each restoration plan component will be directly linked to the monitoring plan through a categorical, qualitative, or quantitative measure (or sometimes more than one) that would help to assess progress in achieving the restoration goals. For example, one of the likely goals of the restoration plan is to increase the production of Chinook salmon. Effectiveness monitoring would include monitoring trends in population size over time. This effectiveness monitoring component of the monitoring plan will establish quantitative measures (i.e., performance measures) that restoration projects will be expected to achieve each year.

3. Water Quality and Quantity: Water quality is a significant limiting factor for Chinook salmon production, as well as for other salmonids such as coho and steelhead. It is also a reliable indicator of overall watershed condition. Therefore, metrics to determine whether restoration goals to improve water quality and watershed conditions will be established and tracked. For example, toxic algae blooms in the reservoirs behind Copco 1 and Iron Gate dams are expected to be eliminated if the dams are removed. And removal of the dams (and reservoirs) will restore natural seasonal water temperature patterns critical to the health and run timing of fish. Also, riparian habitat improvements in the upper Klamath Basin will rehabilitate the natural filters that result in fewer nutri-

ents entering the waterways. Water quality and water temperature monitoring would confirm whether these water quality improvements are achieved. Water quality monitoring with streamgages would help to ensure that quantitative goals associated with KBRA's Environmental Water Program, and water deliveries to irrigation districts and National Wildlife refuges are being met. Establishing water quantity metrics and goals, coupled with strategic monitoring and measurements, will confirm whether goals are being achieved.

4. Limiting Factors: Limiting factor analysis will highlight any constraints, bottlenecks, or key points along the critical path of restoration plan implementation. The Klamath River Fish Habitat Assessment Team has identified the most important limiting factors for Klamath River salmonids as being water quality (water temperature and nutrients), fish health (elevated adult and juvenile fish mortalities), fish habitat (degraded watershed and riparian areas, fish passage barriers, and inadequate in-stream flow), and water quantity (because it influences the previously mentioned factors). Performance measures will be largely focused on these likely limiting factors, and results from monitoring these factors will serve as indicators of change and progress toward fisheries restoration. Results of earlier limiting factors monitoring will likely inform later work, and this element should be subject to periodic review to assess scientific uncertainties; the need for periodic review is consistent with the timing of the Phase II Restoration Plan.

5. Data System: There would be a great deal of data associated with plan implementation and data management technology can undergo rapid evolution. Periodic review would help ensure that the data management approach remains the best available.

To facilitate the most efficient adaptive management linkages between monitoring data and restoration actions, the co-lead agencies (US Fish and Wildlife Service and NMFS) will develop a Phase I Restoration and Monitoring Plan, which will then be revised and followed by a Phase II Fisheries Restoration and Monitoring Plan completed two years after dam removal, as laid out in the KBRA.

The Trinity River Restoration Program (TRRP) currently employs an adaptive management approach that allows managers to track and learn from the outcomes of management actions. The TRRP approach will provide a good example for modeling the adaptive management approach under the KBRA Fisheries Program.

The KBRA and the Upper Klamath Basin Comprehensive Agreement already have specific metrics, monitoring plans, timelines, and enforcement plans for water management and riparian restoration above Upper Klamath Lake. These will be used to ensure 30,000 acre-feet of water is permanently retired; limitations for Reclamation's Klamath Project (ranging from 330,000 to 385,000 acre-feet/year) are followed; specified in-stream flows for fish in upper basin tributaries are permanently established; and that permanent riparian habitat restorations are completed along stream corridors, with clearly defined standards, levels of landowner participation, and robust protocols for enforcement. Each of these actions will be tracked using an expanded network of stream gages, existing surface-water and groundwater flow models, Landsat remote sensing data, and field surveys to verify that goals are being met.

In addition to the Monitoring Program components listed above, the Pacific Fisheries Management Council has maintained viable (albeit much reduced relative to historical levels) populations of Chinook salmon in the lower Klamath River that contribute substantially to a west coast fishery. They manage Chinook escapement (number of adults likely to return to Klamath River spawning grounds) by monitoring populations and managing harvest allocations. These existing methods of establishing escapement goals, monitoring and management tools are available to help guide, track, and manage an expanded Klamath River-based fishery resulting from dam removal and KBRA implementation.

*Question 4.* Why does the Department of Interior have to be the decision maker on the dam removal? Why can't the legislation be modified to have one—or both of the states be the decision maker on the removal?

*Answer.* The role of the Secretary in the KHSA is reflective of a number of unique factual circumstances relative to the interrelated role of the federal agencies. Moreover, the owner of the facilities, PacifiCorp, along with the other parties to the agreement, bargained that under the unique circumstances of the KHSA, where potential dam removal is intertwined with both a restoration program and Indian water rights settlement, the Secretary is the most appropriate entity to be making this decision.

The Federal government has a significant interest in the Klamath River Basin, including: the protection and restoration of fish species listed under the Endangered



Species Act (ESA); improving aquatic habitat and water quality for salmonid and resident fish populations important to Native American tribes; and restoring the economic viability of the commercial and sport fishing industries. The Klamath Basin historically supported one of the most abundant salmon fisheries in the nation, with an estimated pre-development run size of up to a million salmon per year. As a result of multiple stressors, these fisheries have declined steeply in the Klamath Basin. Fall-run Chinook salmon are now estimated to be 14 percent of their highest historical estimated abundance; and coho salmon abundance is at an estimated 2 percent. Two species of suckers that reside in and around Upper Klamath Lake are listed as endangered under the ESA and coho salmon in the Klamath River are listed as threatened.

The U.S. Department of the Interior's (Interior) Bureau of Reclamation (Reclamation) manages the Klamath Reclamation Project (authorized in 1905) that diverts water from the Klamath River for irrigated agriculture. Interior's U.S. Fish and Wildlife Service (FWS) manages six National Wildlife Refuges in the Klamath Basin. The U.S. Department of Agriculture's U.S. Forest Service and Interior's Bureau of Land Management (BLM) manage other public and Federal lands along the Klamath River and on tributaries to the river. The United States has trust obligations for the Federally-recognized tribes that use the river. The Yurok, Karuk, and Klamath Tribes are parties to the KBRA as well as the KHSA. The U.S. Department of Commerce's NOAA Fisheries Service manages the west coast commercial salmon fishery under the Magnuson-Stevens Fishery Conservation and Management Act, which relies on healthy Chinook stocks from the Klamath River. NOAA Fisheries Service also oversees implementation of the Endangered Species Act for coho salmon that are listed as threatened species in the Klamath River.

In 2011, the Non-Federal Parties to the KBRA estimated that agricultural production in the Upper Klamath Basin contributes \$600 million per year in farm-gate and other commercial revenues. Farming is one of the leading sustainable businesses within this region and is relied upon for household income, property and other taxes, and 4,500 jobs. Salmon fisheries reliant on fish from the Klamath River result in more than \$150 million per year in economic benefits in Oregon and California. In addition, six National Wildlife Refuges provide habitat for most of the migratory waterfowl on the Pacific Flyway and habitat for fish. Representatives of Interior, including the Secretary's office, the Solicitor's office, the Bureau of Indian Affairs, BLM, Reclamation, and FWS, as well as NOAA Fisheries Service and the Forest Service worked with State, Tribal, irrigation, commercial fishing, conservation organizations and business entities to develop the Klamath Agreements. The KHSA is also connected to the settlement of Indian water rights in the basin. The failure to follow the KHSA could impact the final settlement of tribal water rights, thus potentially placing other water users at risk.

The recent drought conditions have confirmed that in administering these assets and optimizing their benefits for all, the Department, along with its federal partners, must also account for operations of the PacifiCorp dams and there is a strong need for federal actions throughout the basin to be integrated to the extent feasible in an efficient and coordinated manner. Inserting additional agencies with independent mandates into the dam removal decision making process could make it difficult for federal agencies to manage the resources of the basin in real-time as has been the case over the past few years.

In addition, one of the key components of the Klamath Agreements that was bargained for is management of risk for ratepayers, which is accomplished, in part, by allowing PacifiCorp to maintain its ability to seek a new license if the Klamath Agreements are not implemented. Currently, FERC does not interpret the Federal Power Act in a manner that allows for a licensee to maintain a relicensing posture while also evaluating whether dam removal is appropriate. This component is a crucial part of the bargained for benefit by PacifiCorp on behalf of the ratepaying public.

Finally, it is important to remember that the Interior Secretary will not make a decision on dam removal alone. As stated in the KHSA, that decision will be made by the Interior Secretary, in cooperation with the Secretary of Commerce and other Federal Agencies. At this time, the Secretary will also determine whether the dam removal entity will be the federal government, or a non-federal entity. In the event of an affirmative determination on dam removal, California and Oregon will provide notice to the Secretary and other parties within 60 days whether each state concurs with the affirmative determination. In its concurrence decision, each state will consider whether: (i) significant impacts identified in its environmental review can be avoided or mitigated as provided under state law; and (ii) facilities removal can be completed within the state cost cap of \$450 million. If the Secretary selects a non-federal Dam Removal Entity, the states would also decide whether to concur with

that selection. If the Secretary determines not to proceed with facilities removal, the KHSA terminates unless the parties agree to a cure for this potential termination event.

Given the strong federal nexus in the Klamath Basin and the settlement of tribal rights that are connected to the KHSA, all of the settlement parties agreed, as part of the negotiation process, that a decision by the Secretary of the Interior, in consultation with the Secretary of Commerce and other federal agencies, and with concurrence by the governors of California and Oregon, was the best way to make a decision on Klamath River dam removal.

*Question 5.* Why is this not the first of many dam removals we will see by the federal government? If not, why not?

Answer. The Klamath River dams represent a unique situation when the economic value of existing dams are low enough, and the cost for bringing them into compliance with modern regulations is high enough, that a private company chooses dam removal over FERC relicensing. So while it is conceivable that the federal government could enter into similar agreements in other parts of the country, we believe it would require buy-in from private dam owners, along with other stakeholders. In each case there would have to be a determination by public and private parties that dam removal is a better option than FERC relicensing, and agreement that dam removal is the best and most affordable way to help restore a basin and to protect federal and tribal interests. The specific circumstances in the Klamath Basin that made dam removal preferable for PacifiCorp, when compared to relicensing, may not be that common.

In this instance, PacifiCorp did an analysis of their four lower dams on the Klamath River. These are primarily single purpose dams, privately owned, and collectively produce an average of 82 megawatts of hydropower. They are not operated as flood control structures and they do not store water for downstream agricultural, commercial, or municipal purposes. Federal agencies have mandated conditions and prescriptions to be included in any renewed license that may be issued by FERC. These conditions and prescriptions would require each of the four dams to be retrofitted with new or updated fish passage facilities. A renewed long-term license would also contain provisions for water quality and water temperature improvements. New conditions of a FERC license are projected to decrease power production by about 20 percent and all but eliminate peaking-power opportunities. Upgrading these dams would exceed \$460 million dollars in capital and operation costs over the term of a new license, and the financial liability could be much greater if water quality, water temperature, and fish passage fixes were protracted or proved prohibitively expensive to PacifiCorp. With all these circumstance taken together, PacifiCorp concluded (with concurrence from both the California and Oregon Public Utility Commissions) that removing the dams under KHSA and developing replacement power was less financially risky for their customers than the high cost and uncapped liability of FERC relicensing.

Moreover, these agreements are not just about dam removal. They are much more. They more accurately should be seen as a public-private partnership that will result in sustaining and restoring a community's economy, helping farmers and ranchers survive water shortages, saving and creating jobs, keeping power costs down, restoring an ecosystem and its fishery, and meeting tribal trust responsibilities.

*Question 6.* In terms of funding, the Klamath Basin already receives a funding now (approximately \$20 million annually). What specific performance measures will you have in place to show how an additional \$500 million in the next ten years will make a tangible difference in achieving the purposes of the agreements?

Answer. The Klamath Agreements are designed to preserve, maintain, and restore the natural resources of the Klamath Basin and the communities whose economies are reliant upon those resources. In the upper basin alone there is a thriving \$600 million annual agricultural economy that these Agreements are designed to protect. There are similar economies in the Lower Basin supported by commercial and sport fishing that will be expanded and protected.

In addition to maintaining the agricultural economy, the KBRA goals also include increasing the natural production of fish throughout the basin, expanding fish harvest opportunities, establishing reliable water and power supplies for agriculture (farming and ranching) and delivering water to water-starved National Wildlife Refuges. Many performance measures and monitoring plans have, or will be developed, to track and monitor progress and to ensure these agreement goals are met.

The KBRA Fisheries Program will include development of long-term, comprehensive plans soon after KBRA is authorized. As stated in KBRA, this program will establish metrics to evaluate program progress, using the best available science. The metrics will consider and integrate the four parameters for evaluating fish popu-

lation viability status, including: abundance of fish, population growth rate, genetic diversity, and population spatial structure (geographic distribution). KBRA includes a robust Fish Monitoring Program to provide data to track these metrics and to ensure restoration plans are adaptively managed to maximize success.

Improving fish population viability requires restoring their habitat and improving flow conditions and water quality. Detailed planning for this has occurred in the upper basin. The Upper Klamath Basin Comprehensive Agreement has specific metrics, monitoring plans, timelines, and enforcement plans to ensure: 30,000 acre-feet of water is permanently retired; specified in-stream flows for fish in upper basin tributaries are permanently established and with clear protocols for enforcement (many new stream gages are being installed); and that permanent riparian habitat restorations are completed in and along stream channels, with clearly defined standards, levels of landowner participation, and robust protocols for enforcement. Riparian restoration ranges from reestablishing vegetation in stream corridors, reducing and treating agricultural return flows, reconnecting streams to floodplains, increasing channel complexity, and preventing entrainment of fish in diversion canals.

Overarching performance measures for the water-sharing aspects of the KBRA and the Upper Klamath Basin Comprehensive Agreement in the Upper Basin are also clearly defined. These include, annual diversion limitations for Reclamation's Klamath Project (ranging from 330,000 to 385,000 acre-feet), reductions in consumptive use of irrigation water by Off-Project water users (30,000 acre-ft), deliveries of adequate amounts of water to National Wildlife Refuges in about 9 of 10 years (as compared to 1 in 10 years currently), and new specified in-stream flow minimums in many tributaries above Upper Klamath Lake to benefit fisheries. Each of these measures will be tracked using an expanded network of stream gages, existing surface-water and groundwater flow models, and Landsat remote sensing data to calculate evapotranspiration rates and verify achieved reductions in consumptive use of water in the Upper Basin.

*Question 7.* Given fiscal constraints we are under, what happens if the funding is not provided at the rate envisioned under the agreement?

Answer. Our view is that failure to timely implement the funding in the Agreements not only would prolong the significant risks faced by the basin's natural resources, as well as all the farming, ranching, fishing, and tribal communities who depend on them, but also potentially increase the need for the same type of future extraordinary financial relief we saw in 2001, 2006, and 2010 where the government stepped in and provided additional support in order to mitigate the negative economic effects of drought and closed salmon fisheries.

Specifically, without a fully funded Agreement, there will be much less certainty for irrigation water for farmers and ranchers, and deliveries of water to our water-starved National Wildlife Refuges will likely not improve. In addition, fisheries will likely not rebound as much if improvements in fish habitat, flow variability, and water quality are not attained, causing continued hardship for fishing communities and Indian tribes. The number of jobs saved and jobs created in the agriculture, fishing, and construction industries would be less.

Finally, several of the key provisions of the agreement rely on certain levels of funding; not meeting these funding requirements could undermine bargained-for-benefits and the implementation of these agreements. For example, the permanent assurances that the Klamath Basin Tribes will not make senior water rights calls against the Klamath Reclamation Project depend on certain funding commitments (see Sections 15.3.3 15.3.4 of the KBRA). Some of the benefits for the federal government are also linked to funding. For example, the three Klamath Basin Tribes that are parties to the KBRA have agreed to relinquish and release claims against the United States when certain conditions, including funding specific elements of the KBRA are complete. The claims that would be relinquished and released are: 1) all claims resulting from (a) water management decisions, including the failure to act, or (b) the failure to protect, or to prevent interference with, the Tribes' water or water rights, that relate to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering rights or other activities, due to loss of water or water rights); 2) all claims relating to the negotiation, execution, or adoption of this Agreement and the Hydroelectric Settlement and 3) all claims relating to the litigation of the Klamath Tribes' water rights in the Klamath Basin Adjudication (KBA) in Oregon in Cases 282 and 286; and if the OPWAS under Section 16.2.1 is successful in resolving the contests in any other case in the KBA, all claims relating to the litigation of such other case; (see Sections 15.3.5, 15.3.6, and 15.3.7 of the KBRA).

## RESPONSES OF JOHN C. BEZDEK TO QUESTIONS FROM SENATOR HELLER

Over the past couple months, California Senator Dianne Feinstein and I have teamed up to navigate the Emergency Drought Relief Act (S.2198) to Senate-passage. On the Thursday, May 22nd, that bill cleared the Senate by unanimous consent.

Sec.4(C)(7) of that bill requires the Secretary of the Interior to pursue pilot projects that would facilitate water conservation efforts in the basin states aimed at increasing levels at Lake Mead and other regional reservoirs in the Colorado River Basin.

*Question 1.* If enacted, what types of projects can the Department implement to improve levels at these important reservoirs? How can this authority assist region drought relief? What can we realistically accomplish?

Answer. If enacted, Sec. 4(c)(7) of S. 2198 would provide the Secretary with statutory authority, direction and prioritization with respect to pilot projects that could facilitate water conservation by assisting state efforts designed to increase water levels at Lake Mead and Lake Powell, the primary regional storage reservoirs in the Colorado River Basin. If enacted and funded, Reclamation would seek to implement this section in partnership with states and other local governments in a way that ensures the most beneficial and most cost-effective projects are funded. Requiring a non-Federal cost share for any Federal grants or funds provided, such as the Reclamation and Colorado River partners' recent \$11 million funding announcement under the Colorado River System Conservation program to fund new Colorado River water conservation projects, is often an effective way to ensure these goals are met, and to stretch the impact of Federal funds further.

This authority could be used to facilitate voluntary water conservation actions (e.g. pay existing water users to not use water) in the Colorado River Basin and would build on previous efforts undertaken in the Lower Basin of the Colorado River that have led to considerable conservation and retention of water supplies that have enhanced the elevation of Lake Mead. By enhancing system storage in Lake Mead and Lake Powell the likelihood and severity of shortages in the Lower Basin or disruptions of operations in the Upper Basin can be partially reduced. Disruptions to recreational opportunities at Lake Powell and Lake Mead National Recreation Areas could also be reduced if these efforts are successful.

*Question 2.* Many people believe the drought is primarily impacting Las Vegas because of our dependence upon Lake Mead for southern Nevada's water supply, however isn't it the case that if a shortage is declared by the Secretary, the States of Arizona and even California will suffer major water cuts?

Answer. Depending on conditions and water availability in the Lower Basin, it is correct that the States of Arizona, California and Nevada could be subject to decreases in water allotment, and depending on the extent of the shortage could all experience significant water shortages. Under current operational guidelines, reductions in the annual amount of water available for delivery to Lower Basin users would be triggered if the projected January 1 elevation of Lake Mead is at or below 1075' above sea level. A shortage condition is not anticipated for calendar year 2015. However, as of August 2014, the best available indication is that there is a 36% probability that a Lower Basin shortage condition could occur in calendar year 2016. This percentage estimate may have changed slightly since that date, but we are confident that the probability remains significant.

*Question 3.* What will happen if the basin states do not work together to improve the water supply in the Colorado River?

Answer. Although it is difficult to foreshadow with any certainty the hydrologic conditions of future water years, there would be a significant possibility that continued low water conditions could trigger reductions in the annual amount of water available for delivery to Lower Basin users. Under the Colorado River Interim Guidelines for Lower Basin Shortages, signed by the Secretary in 2007, various water elevations at Lake Mead trigger incremental reductions in water deliveries to the Basin States. For example, at elevation 1075', water deliveries to the lower Basin states would be reduced from 7.5 million acre-feet to 7.167 million acre-feet, a reduction of 4.4%. At elevation 1050, water deliveries would be further reduced to 7.083 million acre-feet, a total reduction of 5.6%. At elevation 1,025 water deliveries would be restricted to 7.0 million acre-feet, a total reduction of 6.7%.

Under such shortages, further reductions in lake elevation would partially be forestalled, depending on Colorado River inflows; however, the Colorado River system would not be able to fully meet currently scheduled water deliveries, and there would be significant diminishment of system benefits to power generation, environmental, and recreational purposes. Water managers and water users in the Colorado River Basin have long recognized the benefit of adapting to and mitigating for the

impacts of shortfalls between water supply and demand, and further cooperation and communication throughout the Basin, among and between Basin States, will be beneficial towards enhancing the reliability of the system.

In order to allow for management flexibility, the seven Colorado River Basin States have recommended an operational program for the creation and delivery of intentionally created surplus water. In furtherance of this recommendation, numerous major water users within the Lower Basin have identified their willingness, under specified circumstances, to participate in such an operational program. Such a program could help to make the most cost-effective use of water in the basin and would likely partially mitigate against the most detrimental effects of shortage—or low reservoir conditions at Lake Mead.

*Question 4.* In an earlier version of the legislation, we specifically included a provision that prohibited the Department from utilizing the Upper Colorado River Basin Fund or the Lower Colorado River Basin Development Fund to pay for the authorized projects. In working with the Department, we ultimately determined this express prohibition was not necessary. But I want to ask now that the bill that has passed --- will the Department commit to not utilizing either of the Basin Funds to fund authorized drought activities, without the express, prior approval of the power customers, in accordance with the intent of the revised bill?

*Answer.* The Department recognizes the modifications that were made to the bill during consideration in the Senate. It is our intent to work within our existing authorities and practices of consultation and concurrence with respect to funding any authorized drought activities. The type of authorized activities would differ and be subject to the distinct statutory provisions applicable in the Upper and Lower Basins. While we do not anticipate any undertakings that would not garner the support of key stakeholders, and would in fact be designed to protect ongoing power operations, the particular types of approvals applicable to any potential drought activities would depend on the proposed activity, and would be undertaken in close consultation with, among others, the affected states, power customers, Tribes and our colleagues in the Western Area Power Administration.



## APPENDIX II

### Additional Material Submitted for the Record

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#### STATEMENT OF THE KLAMATH BASIN TASK FORCE

##### REPORT AND RECOMMENDATIONS

##### *Summary of Findings and Recommendations*

In early July of 2013, Senators Wyden and Merkley, Congressman Walden, and Governor Kitzhaber convened the Klamath Basin Task Force “to resolve the water, power and other resource management issues in the Klamath River Basin. . .” They asked the Task Force to address three issues:

1. Develop a proposed resolution of remaining water management issues in the upper Klamath Basin.
2. Address outstanding power issues for the Klamath Reclamation Project and the Upper Basin irrigators.
3. Reduce the Federal costs of achieving long-term sustainability in the Klamath Basin.

This introductory section summarizes the Task Force’s findings, and its recommendations for Federal legislation. The sections following the introduction provide more detail on each issue.

##### UPPER BASIN WATER MANAGEMENT

##### *Findings*

- The Klamath Basin Restoration Agreement (KBRA) resolved some, but not all, water use issues in the basin. In particular, Section 16 of the KBRA anticipated an Off-Project Water Agreement between off-project irrigators and the Klamath Tribes and provided a framework for such an agreement. However, efforts to reach such an agreement had not succeeded at the time the KBRA was signed.
- In March of 2013, the State of Oregon completed the administrative phase of the Klamath Basin (water) Adjudication. The adjudication was carried out for the purposes of determining pre-1909 water rights, as well as Federal reserved water rights. The adjudication confirmed most water right claims, including many of those made by the Klamath Tribes, the United States and the Klamath Reclamation Project. Until the administrative phase of the adjudication was completed, the State did not regulate water usage in favor of the claims.
- Low snow pack and rainfall in the winter and spring of 2013 led to low stream flows later in the year. In May, Governor Kitzhaber issued a drought declaration for Klamath County. In early June, the Klamath Project, the United States, and the Klamath Tribes all requested that water rights be regulated to protect senior water rights for the Klamath Reclamation Project and for the Klamath Tribes.
- The Klamath Reclamation Project continued to receive water during the irrigation season in part because of the agreements contained in the KBRA between the Project water users and the Klamath Tribes. While water delivery to the Project was reduced as a result of the drought, owing to a combination of factors, overall agricultural production was not significantly affected.
- In the upper Klamath basin (above Upper Klamath Lake), however, surface water uses were shut down beginning in June in order to protect senior water rights. As a result, agricultural production in the upper Klamath basin was reduced significantly.
- The Water Working Group, a sub-group of the Task Force, negotiated an Agreement in Principle (AIP) that contains a detailed framework for resolving water, land management and economic development issues in the upper Klamath

basin. The AIP is expected to be the basis for a final agreement, following input from affected communities.

#### *Recommendations*

- Federal authorizing legislation for the Klamath should include authority to implement and fund as applicable all elements of the Water Use Program and the Riparian Restoration and Management Program described in the AIP, including:
  - Funding and authorization for the interim Water Use Program;
  - Authorization for appropriate federal agencies to participate in all appropriate aspects of the Final Upper Basin Water Agreement; and
  - Resolution of certain Federal and tribal water right claims and contests in the Klamath Basin Adjudication.
- The U.S. Department of Agriculture, including the Forest Service and the Natural Resources Conservation Service, and the National Oceanic and Atmospheric Administration (NOAA), should participate in the Final Upper Basin Water Agreement.

#### POWER ISSUES

#### *Findings*

- Sustainable agriculture within the Klamath Reclamation Project and in the Off-Project area depends on affordable power as well as predictable levels of water supply. Unlike most other Bureau of Reclamation projects, the Klamath Reclamation Project does not have a source of federal power. Past contractual arrangements provided lower cost power On-and Off-Project, but those agreements have expired. Replacing those arrangements with new means to provide affordable power is critical to the economic sustainability of both the On-Project irrigators and the Off-Project irrigators and meeting purposes specified in Section 17.1 of the KBRA.
- Recognizing the importance of affordable power rates, the KBRA includes, as a critical element, a Power for Water Management Program. The Program consists of three elements, each intended to help achieve the outcome of predictable, affordable power rates. The three elements are:
  - An Interim Power Program designed to provide lower cost power while permanent programs are put in place;
  - A Federal Power Program designed to provide lower cost power from the Bonneville Power Administration (BPA) and the Western Area Power Administration (WAPA) to the Bureau of Reclamation for delivery in both the Project and (for BPA power) the Off-Project area; and
  - A Renewable Power Program designed to provide stable power costs through the development of renewable generation for Klamath irrigators (again, including both the On-and Off-Project Areas).
- Federal legislation is required to fully implement all three Programs, both in terms of new authorizations and in terms of appropriations.
- For the Federal Power Program, Federal legislation is required to authorize the Bureau of Reclamation to acquire Federal power for use by Off-Project irrigators. There is a deadline for requests for this power that is unlikely to be met unless Federal legislation is passed soon. There may be another opportunity after this date for Reclamation acquire BPA power to serve Off-Project irrigators, but that power is obtained by BPA at whatever the wholesale market price is at the time and is almost certain to be considerably more expensive than BPA Tier 1 power..
- The Bureau of Reclamation has existing authority to acquire federally-generated power (from BPA and Western Area Power Administration) for distribution and delivery (by PacifiCorp) to Klamath Reclamation and On-Project irrigation loads. However, initial estimates of the cost of that power as delivered indicate that the cost savings to irrigators are unlikely to be as large as were estimated during the development of the KBRA.
- The Federal Power Delivery Workgroup has developed a work plan and has begun implementing the tasks necessary for Reclamation to purchase power from BPA. These steps include a determination as to whether the power provided by BPA is likely to reduce Klamath irrigators' power costs significantly relative to current and projected rates without such an arrangement. At the same time, the Bureau of Reclamation is undertaking a comprehensive review of the most effective means of serving both On-Project and Off-Project loads.



That review will examine multiple options, including conservation and efficiency, as well as new renewable generation. Together, these steps will be key in determining the future direction of the Power Program.

- One potential form of renewable generation to be examined in more detail is the development of solar generation systems to serve Klamath irrigation loads. Included in this examination will be an evaluation of the use of the State of Oregon's net metering rules, which provide bill credits set at the utility retail rate for excess power generated by such systems.
- Regardless of what methods or combinations of methods are used to return power costs to sustainable levels consistent with the KBRA, affordable power rates remain an essential element of the overall Klamath agreements

#### *Recommendations*

- Federal authorizing legislation for the Klamath Settlement Agreements should include authority to implement and fund as applicable all elements of the Power for Water Management Program, including:
  - The interim power program;
  - The renewable resource program (including conservation and efficiency);
  - Authority for Reclamation to serve Off-Project irrigators with low-cost electricity purchased from Bonneville; and
  - Authority for appropriate Federal agencies to participate in other means of achieving lower-cost power for On and Off-Project irrigators.
- The authorization should include flexibility so as to not preclude realization of equivalent net power cost outcomes that are contemplated in the KBRA Power for Water Management Program by alternative means.

#### REDUCING FEDERAL COSTS

#### *Findings*

- The new Federal authorizations for appropriations to implement the Klamath agreements total \$250 million in 2014 dollars.

#### *Recommendations*

- The Federal legislation should include only the new authorities and the new authorizations for appropriations that are needed to implement the Klamath Basin Agreements.
- The authorizing legislation should confirm that authorization for appropriation already exists for all but the specified line items in Appendix A [Federal Authorities memorandum and table] of this report. A comparable approach was used in Public Law 108-361, the CalFed Bay-Delta Authorization Act. In addition, the legislative history for the authorizing legislation should confirm the existence of these authorities for appropriations. As part of this approach, the congressional committees should consult with the Federal agencies regarding their existing authorities and reflect that information in a committee report.
- The legislation should include provisions for an annual report on the progress in implementing the legislation, including a cross-cut budget showing the funding that was requested by the Administration and from other sources, and the funding that was provided.

The Cost Review Workgroup has also conducted a review to identify additional opportunities to reduce the Federal costs of implementing the KBRA. The workgroup reviewed all of the KBRA programs and worked to identify alternative funding sources that could reduce the need for new Federal funding. The results of this review are described later in this report.

#### BACKGROUND

On July 3, 2013, Senators Wyden and Merkley, Congressman Walden, and Governor Kitzhaber convened the Klamath Basin Task Force “to resolve the water, power and other resource management issues in the Klamath River Basin. . .” The letter to the Task Force participants states in part:

The current crises in the Basin require immediate attention, leadership, and constructive efforts of us all. Although the Basin has faced many of these challenges for some time, it is clear that now is the time to move for a comprehensive and lasting solution that protects the vast natural resources of the basin, while also providing the stability and certainty needed for the region's economy to continue to thrive.

It is our expectation that the task force will work to address three tasks:

1. Develop a settlement of water management issues in the upper Klamath Basin that results in:

- At least 30,000 acre feet of increased water inflows into Upper Klamath Lake through a voluntary program to idle water usage;
- Permanent resolution and protection of significant riparian areas in the Wood, Sprague, and Williamson basins, as well as other tributaries to Upper Klamath Lake, sufficient to produce the water quality and habitat improvement needed for fisheries; and
- Regulatory assurances for water and land uses in the Upper Basin, both in terms of a negotiated settlement of the exercise of state water rights, and Federal Endangered Species Act (ESA) and Clean Water Act (CWA) compliance.

2. Work to address outstanding power issues for the Klamath Basin Project and the Upper Basin irrigators:

- It is crucial that an affordable and certain power supply is attained for both on project and off project irrigators.

3. Work to reduce the Federal Costs:

- We want the task force to review specific ideas for reducing the costs to the Federal government of the overall package of Klamath Basin measures. This will require input from both Upper and Lower Basin participants.

The outcomes we seek are sustainable fisheries and a sustainable level of farming and ranching in the Upper Basin, as well as power rate arrangements needed to maintain the on-project and off-project farming and ranching operations and support the ranching and farming families that are key to the area's economy.

We expect the task force to build on the good work that has already been completed, and the agreements that have been reached by many of the parties involved. Your task is to develop recommendations on the remaining set of issues in the Basin.

When the task force completes its work and reaches consensus, the Members of the Oregon delegation will use the group's recommendations as a basis for developing legislation to authorize those portions of the agreement that require Federal legislation. At that time, we will ask that all stakeholders support these legislative efforts.

The Task Force also established four workgroups; their efforts are described in this report. The Klamath Basin Task Force has held five meetings in Klamath Falls, Medford, and Ashland, Oregon. A list of the Task Force members is attached as Appendix B. These meetings have been open to the public and all materials have been posted on the Oregon Governor's Natural Resource Office website. For more information on the Task Force please see: <http://www.oregon.gov/gov/GNRO/Pages/index.aspx>

The Task Force did not address other water and land management issues in the Klamath Basin that are important to some members of the Task Force. These matters were outside the scope of the Task Force.

#### UPPER BASIN WATER MANAGEMENT

The three primary tributaries to Upper Klamath Lake (the Wood, the Williamson, and the Sprague Rivers) serve as the main sources of water for fisheries in the upper portion of the basin, while also supporting several hundred farming and ranching operations. According to the Oregon Water Resources Department (OWRD), there are approximately 500 water right holders in the upper basin. In addition to these water rights, the Klamath Tribes and the United States claim water rights on all three tributary systems, as well as the right to maintain certain levels of Upper Klamath Lake, for instream purposes. The Klamath Reclamation Project and its water users also claim rights to water in Upper Klamath Lake for irrigation uses within the Project.

In March of 2013, OWRD completed the administrative phase of the Klamath Basin (water) Adjudication. The Adjudication confirmed most water rights claims, including many of those of the Klamath Tribes and those of the Klamath Reclamation Project. The rights confirmed for the Klamath Tribes and the United States have the earliest priority dates in the upper basin. As a result, in times of water shortage, agricultural and other uses of water are likely to be regulated so that sen-

ior rights are met. Regulation occurred in most of the upper basin in 2013, beginning in June. As a result, irrigation for many agricultural operations was shut off.

Although there have been several efforts to settle water right issues in the upper basin, none have succeeded to date. Even in the KBRA, no upper basin water settlement was included, although the agreement does contain the outlines for an Off-Project Water Agreement.

*Upper Klamath Basin Agreement in Principle (AIP)*

Over the past six months, irrigators in the upper basin have been meeting with the Klamath Tribes and the United States to attempt to resolve water, land and economic issues in the upper basin. The parties have reached an Agreement in Principle that is designed to accomplish four objectives.

- a) To support the economic development interests of the Klamath Tribes;
- b) To provide a stable, sustainable basis for the continuation of agriculture in the Upper Klamath basin;
- c) To manage and restore riparian corridors along streams that flow into Upper Klamath Lake in order to achieve Proper Functioning Conditions permanently; and
- d) To resolve controversies regarding certain water right claims and contests in the Oregon Klamath Basin Adjudication.

There are three main elements of the Upper Klamath Basin AIP:

- 1) A Water Use Program designed to reduce consumptive water use in key reaches of the tributaries to Upper Klamath Lake, as well as to increase the volume of water coming into the lake—all in return for a significant reduction in the frequency and extent of water regulation. The AIP is designed to deliver at least 30,000 acre feet of additional water into Upper Klamath Lake, and is consistent with other Klamath agreements.
- 2) A Riparian Restoration and Management Program designed to improve and protect riparian conditions along key reaches of the tributaries to Upper Klamath Lake; and
- 3) An Economic Development component designed to create employment opportunities for the Klamath Tribes, including increased opportunities for exercise of tribal cultural rights.

The Upper Klamath AIP will be developed into a final agreement following input from community members. It is expected that the Final Agreement will be completed early in 2014, so that elements requiring Federal legislation can be incorporated into a bill being developed to complete a comprehensive resolution of Klamath basin issues.

AFFORDABLE POWER FOR KLAMATH RECLAMATION PROJECT AND OFF-PROJECT IRRIGATORS

Water and power issues are closely linked in the Klamath Basin. Power rates for Klamath Reclamation Project and Off-Project irrigators have increased significantly since 2006 when previously-existing fixed-price contracts ended. Utility commissions in California and Oregon provided a transition to rates based on the costs PacifiCorp incurs for generation, transmission and delivery. This transition has significantly increased the costs to irrigate crops, as well as the cost to move water to wildlife refuges and from the Klamath Reclamation Project to the Klamath River for downstream fisheries. Reduction of power costs is critical to maintain efficient water management and the viability of farming and ranching families, an important part of the economy of the Upper Basin. Power costs are also key to the long-term sustainability of some of the nation's most important wildlife refuges and systems. The purposes of the Power for Water Management Program are expressed in Section 17.1 of the KBRA.

There are three elements to the Power for Water Management Program:

- An Interim Power Program to provide funding to assist Upper Klamath Basin irrigators with their power costs while the long-term program is being developed. Implementation of this program for both Reclamation Project and Off-Project irrigators requires Federal legislation.
- A long-term Renewable Power Program to develop renewable resources that would provide benefits to assist with future power costs and strengthen the local economy. This aspect of the Program could include consideration of conservation and efficiency measures, as well as a variety of types of renewable generation including wind, solar, biomass and geothermal which would likely provide revenues to partially offset power costs. Some forms of renewable gen-

eration could be distributed (including on-farm systems). Implementation of this program for both Reclamation Project and Off-Project irrigators also requires Federal legislation.

- A Federal Power Program to provide lower-cost federally-generated power to On-Project and Off-Project irrigators. Under this element, Reclamation purchases electricity from the BPA and the Western Area Power Administration, and arranges for delivery through PacifiCorp's system.

The final package will be dependent on what the best options are for irrigators to realize affordable power costs through the long-term. In addition, different approaches may be best-suited for particular areas. In the end, the best solution may include a mix of Federal power, renewable generation, and conservation measures.

#### AFFORDABLE POWER ISSUES

The objective of the Power for Water Management Program in the KBRA is to achieve a delivered power cost target level at or below the average cost of delivered power for similarly situated Reclamation irrigation and drainage projects in the region. Implementation of all three elements described above—or actions resulting in equivalent benefit to that assumed by the three elements—would contribute to more affordable power. The Bureau of Reclamation is beginning a detailed look at what elements would provide the largest long-term advantage in reduced power rates. Initial estimates indicate that the cost-savings from the Federal Power Program may not be as large as was estimated in 2009-2010.

Without Federal legislation, the interim and long-term programs cannot be implemented. Reclamation is currently working to purchase low-cost Federal power to serve the Klamath Reclamation Project (including the national wildlife refuges) under existing authority. Reclamation needs new authority to purchase Federal power to serve Off-Project irrigators. However, based on current information, the timing of subscription for BPA Tier 1 power will make it difficult to access the low-cost Federal power for Off-Project irrigators. Higher-cost power may be available from BPA at a later time.

#### DELIVERING FEDERAL POWER

Task Force activities have focused on the Federal Power Program, recognizing that enactment of authorizing legislation is essential to be able to move forward at all with the other two elements. A Federal Power Delivery Workgroup has been meeting to develop and implement a plan to deliver Federal power to the Bureau of Reclamation. The workgroup is comprised of: the Department of the Interior, Bureau of Reclamation, Bonneville Power Administration, Western Area Power Administration, PacifiCorp, the Klamath Water Users Association, and the Klamath Water and Power Agency.

Reclamation is working with Upper Basin irrigators to assist in identifying their potential loads for the Federal Power Program. Reclamation is pursuing whether Bonneville will accept the projected Off-Project loads in the July 2014 filing based on expected passage of Federal legislation authorizing Reclamation to serve planned Off-Project loads.

The Federal Power Delivery Workgroup has developed a work plan and is implementing the tasks necessary for Reclamation to purchase power from Bonneville to serve the Oregon portion of the Project beginning in October 2015. The Workgroup is also working with Western on a work plan to serve the California portion of the Project.

One of the key tasks is to develop estimates of the cost of electricity from the Federal Power Program compared to continuing service from PacifiCorp of non-federal power. This information will be important in evaluating whether the federal power element should be a significant aspect of a long-term program, or whether other alternatives should be more actively pursued instead. Until this information and the details of the potential savings from the Interim Power Program and long-term Renewable Power Program are available, there is significant uncertainty about future costs for both Reclamation Project and Off-Project irrigators.

Under Bonneville's subscription and contracting procedures, Reclamation must determine how much power (based on load) it will buy from Bonneville and finalize a power sales contract by July 1, 2014 if it wants to take delivery of power by October 2015. That initial contract load amount is used to set what is called a "High Water Mark". The High Water Mark is the maximum amount of power that Reclamation can buy at Bonneville's Tier 1 rate.

If Reclamation receives authority to serve Off-Project irrigators later than necessary to include Off-Project irrigators in setting the High Water Mark, it would be able to purchase additional power. Such additional power would be sold at Bonne-

ville's Tier 2 rate, which reflects Bonneville's incremental cost to serve the load. In other words, the Tier 2 BPA rate is obtained by Bonneville at a wholesale market price. There is a significant difference in these power costs; the average cost for the Tier 1 rate is currently 3.3 cents per kilowatt hour; the average cost of the Tier 2 rate is about 4.0 cents, which also is subject to change due to market forces (these are wholesale power costs and do not include transmission, distribution, or administrative costs).

To implement the Federal Power Program, PacifiCorp will need approval from the Oregon and California public utility commissions. This approval will require a demonstration that the resulting proposed rates to deliver Federal power are fair, just and reasonable and do not shift costs to other PacifiCorp customers.

#### UPPER BASIN POWER WORKGROUP RECOMMENDATIONS

The Upper Basin Power Workgroup was comprised of irrigators in the Upper Basin and representatives of the Klamath Water Users Association, Klamath Water and Power Agency, and Reclamation. The Workgroup reached consensus on one recommendation:

- Federal legislation is needed to implement the interim and long-term Power for Water Management Programs to provide affordable power to both Reclamation Project and Off-Project irrigators. Federal legislation is also needed to provide Federal power to Off-Project irrigators. The Workgroup supports the enactment of this legislation.

The Upper Basin Work Group has also made administrative recommendations to broaden the interim eligibility criteria for the Federal Power Program.

#### REDUCING FEDERAL COSTS

The Cost Review Workgroup has focused on two efforts: 1) recommendations to the congressional delegation on the new authorizations for appropriations that would be needed to implement the Klamath Basin Agreements; and 2) identification of additional opportunities to reduce the Federal costs of implementing the Klamath Basin Agreements.

#### AUTHORIZATIONS FOR APPROPRIATIONS

After consultation with congressional staffs and others, the Task Force recommends that the legislation should focus on the new authorities that are needed to implement the Klamath Basin Agreements. The Federal agencies identified existing laws that authorize most of the programs in the Klamath agreements. The Federal agencies also identified Klamath programs that require new authority. Although Federal legislation is required to authorize certain actions contemplated under the KHSA, potential dam removal would be funded from non-Federal sources.

Based on information provided by the federal agencies, the programs that require new authorizations for Federal appropriations are the On-Project Plan, development of the Water Use Retirement Plan, remedy for ground water impacts associated with On-Project Plan, development and implementation of the Water Use Retirement Program, the Interim Power Sustainability Program, the Energy Efficiency and Renewable Resources Program, authority for Reclamation to serve Off-Project irrigators with the Federal Power Program, authority for Reclamation to include Off-Project irrigators in the Renewable Power and Engineering Plan, the Drought Plan Restoration Agreement Fund, the Off-Project Reliance Program, and the Off-Project portion of the Interim Flow and Lake Level Program. The new authorizations for appropriations total \$250 million over fifteen years in 2014 dollars Appendix C [Federal Authorities memorandum and Table].

#### REDUCING FEDERAL COSTS

The workgroup also reviewed all of the Klamath programs to identify cost reductions and alternative funding that could reduce the need for new Federal funding. The workgroup began by reviewing the cost reductions adopted by the Klamath Basin Coordinating Council (KBCC, a group formed by KBRA parties to facilitate and implement their agreement) in 2011. Those cost reductions lowered the ten-year cost estimate for implementing the KBRA from \$970 million to \$647 million (in 2007 dollars); this was 33 percent reduction. The 2011 review also identified \$550 million in matching funds from the states of California and Oregon and customers of PacifiCorp. These non-federally funded activities are in addition to the cost estimates for Federal funding of the KBRA. A copy of a report on those cost reductions and non-federal funding is on the KBCC website: [www.klamathcouncil.org](http://www.klamathcouncil.org). The cost

reductions and additional funding to reduce Federal funding in this report are in addition to those made in 2011.

The workgroup has adjusted all of the KBRA costs to 2014 dollars. This increased the total 2011 estimates from \$647 million to \$750 million for 2015 through 2024. The Cost Review Workgroup focused on ten years of costs because this is the time frame used by the Congressional Budget Office. The Federal agencies have identified \$51 million in Federal expenditures that have been made that have the effect of carrying out elements of the Klamath Basin Agreements under existing authorities and another \$10 million estimated for Fiscal Year 2014.

The Federal agencies have also identified ongoing Federal base program funding for actions specified in the Klamath Agreements and made estimates that anticipate future funding would be at similar levels to historical base funding; those estimates total \$107 million over ten years (the ongoing base funding estimates do not include 2013 program reductions and sequestration). The workgroup identified additional reductions in the Fisheries Reintroduction Program totaling \$5 million. Together, these changes reduce the total new Federal funding required by \$173 million.

The Task Force has also identified several new sources of funding for the Klamath Basin Agreements that could reduce the amount needed to be appropriated to carry out the Klamath programs. These include additional funds from the states, Federal off-budget funds, and private foundation funding. Replacing Federal funding with these other sources will require further work by the KBCC.

The first new source of funding is from the State of California. If the proposed California Water Bond passes, and not all of the funding in the bond for the Klamath Basin is required for dam removal costs, the California Natural Resources Agency supports use of up to \$50 million of those funds for restoration projects on the California side of the border. The second new source of funding is the State of Oregon. Oregon has committed an additional \$12 million from the Oregon Watershed Enhancement Board for restoration work in Oregon through a Strategic Investment Program commitment. In addition, private foundation funding is expected to total on the order of \$10 million. Together, these additional sources total approximately \$72 million. Finally, Federal off-budget funds from the Reclamation water rights settlement fund, totaling approximately \$50 million, have been identified by Reclamation. Due to the priority for use of the funds in the act that established the Fund and the currently anticipated demands upon the Fund, the availability of annual increments of the \$50 million is not expected to begin before FY 2025 (i.e., may not be available within the first ten years).

In summary, cost reductions made in 2011 brought the ten year total spending for Klamath restoration to \$750 million. The additional recommended cost reductions, spending already incurred or anticipated as part of base programs, together with additional funding described above will reduce the amount of new Federal funding required to implement the Klamath Basin Agreements to \$505 million in 2014 dollars; this is an additional reduction of \$245 million, or 33 percent. The funds from the Reclamation water rights settlement fund would reduce other Federal costs after 2025.

These Task Force recommendations do not alter the bargained for benefits in the KBRA, including amendments adopted in 2012 that provide for additional reviews for changes that affect the Fisheries or Water Management Programs, and that clarify the roles of the tribes and other fish managers in implementing the Fisheries Program. The Task Force recommends that the KBCC incorporate these changes in a revision to the cost estimates to implement the Klamath Basin Agreements. In addition, it is recognized that the KBCC will continue to refine cost estimates on an ongoing basis, as provided in the KBRA. This may result in a degree of adjustment, up or down, in estimates of costs needed to complete any individual element, based on increased knowledge.

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#### STATEMENT OF THE CONSERVATION AND FISHING GROUPS

American Rivers, California Trout, Trout Unlimited, Pacific Coast Federation of Fishermen's Associations, the Institute for Fisheries Resources, Salmon River Restoration Council, Sustainable Northwest and the Northern California Council of the Federation of Fly Fishers file this statement in support of S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014.

We are very grateful to Senator Wyden, Senator Merkley, Senator Feinstein, and Senator Boxer for bringing this important legislation forward. We respectfully request that this Committee favorably move this legislation this year.

On June 20, 2013, this Committee held a hearing on the Klamath, with a focus on the Klamath Agreements signed in 2010. Following that hearing, Senators

Wyden and Merkley, Oregon Governor Kitzhaber, and Representative Walden convened the Klamath Task Force to address three issues not fully resolved by these agreements: a water rights settlement for the Upper Basin, a significant reduction in the proposed federal budget for implementation of the Klamath Basin Restoration Agreement, and affordable power for irrigation. That task force reached consensus on solutions for these issues in December 2013. And in April 2014, ranchers in the Upper Basin, the Klamath Tribes, and the U.S. and Oregon signed a water rights settlement, the Upper Klamath Basin Comprehensive Agreement. We enthusiastically support this agreement, the focus of the hearing today, because it sets aside differences in favor of advancing the common good in the Upper Basin.

The water resources of the Klamath Basin as a whole have significant national value and federal interest. The Klamath Reclamation Project, authorized in 1905, is one of the oldest in the Reclamation program. Its 3,800 jobs in farming and ranching today produce more than \$560 million annually in economic value,<sup>1</sup> including some of the world's best potatoes, horseradish, mint, and beef. There are six National Wildlife Refuges in the Basin, the first dedicated by President Theodore Roosevelt in 1908. These are among the most productive waterfowl habitats in the Pacific Flyway,<sup>2</sup> supporting 80 percent of the migratory waterfowl and the largest population of bald eagles in the lower 48 states.<sup>3</sup> The Forest Service administers six National Forests which are more than half of the land in the basin, plus the Klamath National Wild and Scenic River. The salmon fisheries of this basin are the third largest in the Lower 48<sup>4</sup> and today support commercial fishing which produces \$32 million annually in economic value.<sup>5</sup> There are six federally recognized tribes which occupy their time-immemorial lands and waters.

Unfortunately, in most years, there isn't enough water in the Klamath River Basin for all legal uses. Over the past century, federal and state laws have regulated individual uses in a manner that has not prevented significant shortages. These shortages have rotated between farming and fisheries. The drought of 2013 was a true crisis for Upper Basin ranchers, and today's historic drought in the region could make 2014 even worse. Litigation and political conflict have been a constant for the water resources in the Klamath Basin.<sup>6</sup> If we continue to muddle through, the future of this basin will be more water shortages, more litigation, and associated hardships.

Diverse stakeholders gathered in 2004 to answer the question: "Can we agree to a better future?" We held hundreds of meetings across a six-year period, in the face of a widespread view that we would certainly fail. After hard compromises, more than forty of these participating stakeholders signed the Klamath Agreements.

Why did we sign the Klamath Basin Restoration and Hydropower Agreements in 2010? The Klamath Agreements are the first-ever comprehensive program for management of these water resources at a basin scale. Implementation will restore sustainable water supply for all beneficial uses. The 2010 agreements, coupled with the 2014 Upper Basin Agreement, will provide a better future for the many communities in this extraordinary basin.

To achieve that goal, the signatory parties committed to unprecedented cooperation to implement fundamental changes in current management arrangements over a 50-year term. The parties making these commitments, subject to Congressional authorization, include: the United States, the States of California and Oregon, three of the four participating tribes, Reclamation contractors and many upstream ranchers, commercial fishermen, PacifiCorp, and other stakeholders.

The Klamath Reclamation Project will be modernized. The commitments and improvements will reduce river diversions, improve irrigation techniques, prevent groundwater overdraft, and prepare for drought and emergency. Tribes will resolve their trust claims against the Project and the United States upon performance of these and other measures. In turn, Upper Basin ranchers may elect to voluntarily lease some of their water for release for the benefit of native fishes in downstream Upper Klamath Lake. In consideration, tribes will not make calls against junior water rights. The future will be far more secure for these farms and ranches.

<sup>1</sup>U.S. Department of the Interior, Bureau of Reclamation, Economics and Tribal Summary Technical Report (2012), p. 2-26.

<sup>2</sup>U.S. Department of Interior and U.S. Department of Commerce, Klamath Dam Removal: Overview Report for the Secretary of Interior (2012), pp. 58, 321 - 324; Dave Mauser, U.S. Fish and Wildlife Service, Effects of the Klamath Basin Restoration Agreement on Lower Klamath, Tule Lake, and Upper Klamath National Wildlife Refuges (2012), p. 9.

<sup>3</sup>Overview Report, p. 58.

<sup>4</sup>Overview Report, p. 58.

<sup>5</sup>Economics and Tribal Summary Technical Report, pp. 2-44 - 2-46.

<sup>6</sup>Congressional Research Service, Klamath River Basin: Background and Issues (Report 7-5700) (2012), p. 1.

The National Wildlife Refuges in the basin will receive a lifeline. For the first time, these refuges will have a reliable water supply. The authorized purposes of the Klamath Reclamation Project will be expanded to permit this use. Refuges will receive an adequate supply 88 percent of the years under the Klamath Agreements, versus 12 percent today.<sup>7</sup> These measures will enhance habitat in these six refuges. Wildlife viewing and hunting, now at 89,000 visits per year, will increase substantially—hunting by nearly 50 percent.<sup>8</sup>

The salmon fisheries in this basin will be restored to good condition. These have declined more than 90 percent over this century,<sup>9</sup> resulting in periodic limitations on commercial catch from Cape Falcon, Oregon to Monterey, California under the Pacific Fishery Management Council's weak-stock management rules.<sup>10</sup> Under the Basin Agreement, these and other native fisheries will receive enough clean water for spawning and rearing, due to reduced diversions by the Klamath Reclamation Project and Upper Basin ranchers. That agreement also establishes the first comprehensive program to address all non-flow stressors from the mountains to the sea. PacifiCorp's power-only dams, which have blocked fish passage to more than 420 miles of spawning habitat<sup>11</sup> since 1918, will be removed. The economic value of commercial and ocean sport fishing will increase by \$185 million over the term of the Klamath Agreements,<sup>12</sup> as these fisheries recover—salmon populations nearly doubling.<sup>13</sup>

We respectfully request that Congress enact statutory authorities to implement certain measures necessary for the comprehensive program, as provided for in S. 2379. For example, National Wildlife Refuges will be authorized as a new purpose of the Klamath Reclamation Project. Another authority will permit the Interior Secretary, rather than the Federal Energy Regulatory Commission, to decide whether removal of PacifiCorp's four dams is in the public interest. According to the Public Utilities Commissions of California and Oregon (PUCs), dam removal under the conditions specified in the Hydropower Agreement will be less costly and risky for power customers than relicensing under the Federal Power Act.<sup>14</sup> The PUCs approved PacifiCorp's application for a 2 percent rate surcharge to generate \$200 million for dam removal, and no federal funds will be used.

Implementation of the Basin Agreement involves proposed new funding authorizations of \$250 million over the next 15 years, taking into account existing authorizations for ongoing federal programs.<sup>15</sup> Is that a fiscally prudent investment? The Basin Agreement will avoid substantial federal liabilities under tribal trust doctrine, resulting from near loss of the fisheries which were essential to tribal sustenance, culture, and religion. It will also reduce the need for emergency relief resulting from water shortages. In the past decade, such relief for farmers or fishermen averaged \$17 million and reached as high as \$60 million in a single year.<sup>16</sup>

Most importantly, the future of farming and fishing communities in this basin will be much more secure. Even in the face of water shortages, these communities produce economic value each year comparable to the entire 15-year budget proposal under the Basin Agreement. That value will increase substantially through this proposed investment. All told, the benefit to cost ratio for Klamath Agreement implementation is expected to be at least 8.7 to 1 and create or sustain over 4,000 jobs.

This Committee is rightly known for your pragmatic and bipartisan approach to resources management. The Klamath Agreements are an unprecedented opportunity for this Committee and Congress to help local communities resolve these water shortages and restore the sustainability of fishing, farming, and tribal uses in the Klamath Basin.

<sup>7</sup> Overview Report, pp. 321 - 324.

<sup>8</sup> Edward Mailett, U.S. Fish and Wildlife Service, *Refuge Recreation Economics: Technical Report for the Secretarial Determination on whether to Remove Four Dams on the Klamath River in California and Oregon* (2011), pp. 25-26 (comparing 50th percentile scenarios).

<sup>9</sup> Overview Report, pp. 4, 58.

<sup>10</sup> Cynthia Thomson, National Marine Fisheries Service, *Commercial Fishing Economics: Technical Report for the Secretarial Determination on whether to Remove Four Dams on the Klamath River in California and Oregon* (2012), pp. 7-9.

<sup>11</sup> Overview Report, p. 14.

<sup>12</sup> Economics and Tribal Summary Technical Report, p. ES-4; Commercial Fishing Economics, p. 30.

<sup>13</sup> Overview Report, p. 17.

<sup>14</sup> Oregon Public Utilities Commission, Order No. 10-364 (2010), pp. 8-13; California Public Utilities Commission, Decision 11-05-002 (Approving a Rate Increase for PacifiCorp Pursuant to Klamath Hydroelectric Settlement Agreement) (2011), pp. 11-13; Overview Report, p. 42.

<sup>15</sup> See Klamath Task Force Final Draft Report (Dec. 2013), pp. 4, 11-13. See also CRS, *Klamath River Basin*, p. 26; Overview Report, p. 218.

<sup>16</sup> CRS, *Klamath River Basin*, p. 10.



Thank you for the opportunity to share our views on these Agreements and the historic legislation that will implement them for the benefit of local communities throughout Oregon and California. Submitted on behalf of: American Rivers, California Trout, Trout Unlimited, Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, Salmon River Restoration Council, Sustainable Northwest, Northern California Council of the Federation of Fly Fishers

#### STATEMENT OF THE HOOPA VALLEY TRIBAL COUNCIL, HOOPA, CA

##### HOOPA VALLEY TRIBE DECRIES NEW BILL TO TERMINATE INDIAN RIGHTS

"The Hoopa Valley Tribe is shocked and disappointed," said Chairwoman Danielle Vigil Masten, "that the so called 'Klamath Basin Water Recovery and Economic Restoration Act of 2014' introduced by Senators Feinstein, Boxer, Merkley, and Wyden would effectively terminate water and fishing rights of our Tribe."

S. 2379, introduced on May 21, 2014, to ratify three lengthy Agreements negotiated between farmers, PacifiCorp, federal agencies, and three tribes, has gotten a hearing. The Agreements call for new federal appropriations of \$900 million and unnecessarily link tribal water rights in the Klamath River to decommissioning of four obsolete hydroelectric dams owned by PacifiCorp.

"It is tragic that the Administration feels that Indian water rights must be sacrificed, and Indian programs cut back, in order for PacifiCorp's owned dams to be removed. We know that the regular Federal Energy Regulatory Commission licensing process leads to dam removal in situations such as this, as shown by the removal of Condit Dam on the White Salmon River in 2011," said Chairwoman Masten.

Chairwoman Masten said the bill directs the Secretary to cut off senior water rights of the Tribe to Klamath River water and fish in California in favor of water diversions for irrigation in Oregon. "Fish need water. The little water we get under this bill will jeopardize on going fishery restoration in the Klamath and Trinity Rivers," said Chairwoman Masten. Under the bill, the existing legal obligation of the United States to protect water needed for fish restoration in California will be subordinated to the priority given to water diversions for irrigation in Oregon.

"We made it clear to everybody that we are not going to sit still for the government doing this against our interests," Hoopa Fisheries Director Mike Orcutt said. "There's not enough water, and there hasn't been." "It is ironic that Senator Feinstein has co sponsored this bill when her California drought bill, S. 2198, points to the existing shortage of water in California. California Central Valley interests are already in court to stop the use of water required to make up for the shortfalls due to the excessive Oregon water diversions authorized by this bill," said Mr. Orcutt.

For over 20 years, the Hoopa Valley Tribe has worked to restore salmon of the Trinity River, the Klamath's largest tributary, and in 1992 obtained legislation mandating that the fishery restoration work be completed. That restoration work is jeopardized by the Klamath Agreements and proposed legislation, Mr. Orcutt pointed out. "We are optimistic that the Senate will not approve these Agreements at the expense of our treaty rights," said Mr. Orcutt. Our detailed analysis of the bill follows.

##### SUMMARY OF NEW KLAMATH AGREEMENTS BILL, S. 2379

On May 21, 2014, Senator Ron Wyden introduced S. 2379, the "Klamath Basin Water Recovery and Economic Restoration Act of 2014." Senators Feinstein, Boxer and Merkley are the only co-sponsors thus far. This bill adversely affects the Hoopa Valley Indian Tribe, through whose Reservation the Klamath River flows in California. No similar bill has been introduced in the House of Representatives yet.

S. 2379 was referred to the Committee on Energy and Natural Resources. This bill is longer (64 pages) than the failed bills introduced in 2011 by Senator Merkley and Congressman Thomson (43 pages) principally because it adds provisions for the new Upper Klamath Basin Comprehensive Agreement.

The Hoopa Valley Tribe has many concerns regarding the Bill and will present detailed changes and explanations as soon as possible. Here is a summary of the bill:

##### *Section 1. Short title.*

##### *Section 2. Definitions.*

The Agreements addressed by the bill include the Klamath Basin Restoration Agreement (KBRA) (approximately 200 pages in length), the Upper Klamath Basin Comprehensive Agreement (UKBCA) (approximately 100 pages in length), and the

Klamath Hydroelectric Settlement Agreement (KHSA) (approximately 100 pages in length). The full text of the Agreements is found at <http://klamathrestoration.gov>.

*Section 3. Authorization, Execution and Implementation of Settlement.*

(a) Like S. 1851 (the 2011 bill), the new bill provides that the settlements are “authorized, ratified, and confirmed,” except to the extent modified by this Act.

(b) As ratified, the Secretaries of Commerce, Agriculture, and Interior must promptly implement the KBRA, KHSA, and UKBCA. Signing of the Agreements is deemed to comply with NEPA, despite the impact on the Klamath River in California resulting from the guaranteed irrigation diversions in Oregon provided in the KBRA. (See KBRA Sec. 15.1.1.B and App. E 1.)

(d) In “implementing” the Agreements, the Secretaries shall comply with NEPA, the ESA and other statutes.

(e) The Secretary of the Interior will publish a notice in the Federal Register when the KBRA is fully implemented (or approximately in 2022) and when PacifiCorp’s four dams have been removed (or the KHSA terminates). Law suits challenging whether the notice should have been published must be filed within one year after publication.

(g) The Act does not alter the authority of any tribe of the Klamath Basin “to exercise any water rights the Indian tribes hold.” The KBRA, however, does diminish the duty of the United States to protect those Indian water rights: it terminates the Government’s duty to provide sufficient water for fish in the Klamath Basin if that requires more than the water remaining after the irrigation diversions, which will have priority. Under existing law, the U.S. Bureau of Reclamation is obligated to ensure that irrigation operations do not interfere with the Tribes’ senior water rights. This obligation is changed by the KBRA and the Act, which create a new priority for irrigation withdrawals of 378,000 acre feet per year in Oregon, regardless of the effect on fish restoration downstream. If, after those irrigation withdrawals too little water remains for fish, then the United States will not protect the Indians’ fishing rights but will enforce the priority for irrigation diversions. See Sec. 5(f) below. These provisions are much like those in S. 1851.

(h) Water rights are not affected “except as specifically provided” in the Agreements. The KBRA does diminish the authority and duty to protect federal water rights of tribes downstream of the irrigation project.

(j) This Act does not permit any person or entity “not a party to the Settlements” to sue on a claim to enforce the Act or the settlements.

(l) This Act does not affect the Endangered Species Act or Clean Water Act or certain other federal acts. This is much like S. 1851. The provision is misleading because the KBRA requires parties to that Agreement to support water diversions and follow procedures to obtain approval under the ESA for those diversions, despite the effect on fish. See KBRA Sec. 21.3. Since the KBRA establishes no target salmon run sizes or harvest goals, its success cannot be measured. See KBRA Sec. 10.1.2, 10.2.2.

(m) Sovereign immunity is not waived. This makes it harder to sue regarding impacts of the Settlements.

*Section 4. Klamath Project Authorized Purposes.*

(a) This adds “fish and wildlife purposes” to the purposes of the Klamath Irrigation Project. However, those purposes are subordinated to the irrigation purposes and “shall not adversely affect the irrigation purpose of the Klamath project.” This is substantially identical to Section 105 of S. 1851.

(c) Revenues from leasing of Tule Lake and Lower Klamath National Wildlife Refuge lands for commercial farming will be distributed in the same way as described in S. 1851. This unusual direct spending arises from the unique allowance of leasing out wildlife refuges for commercial farming, lands that were originally set apart for wildlife purposes only.

*Section 5. Tribal Commitments; Release of Claims.*

(a) The Klamath Tribes’ commitments and releases are authorized, just as in Section 106(a) of S. 1851, except that this also covers the UKBCA. No further tribal action is needed.

(b) The Karuk and Yurok tribes’ waivers and releases are authorized and confirmed as effective and binding.

(c) Permanent release of claims by Party Tribes against the United States does not occur until various sections of the KBRA (relating to funding and dam removal) are satisfied. However, even before the releases become permanent,

the signatory tribes' assurances of non interference with diversion of water for the Klamath Reclamation Projects are in effect. See KBRA Sec. 15.3.8.B.

(e) Tolling of claims. The six-year statute of limitations for claims relating to the tribes' releases does not start until publication of a notice described in the KBRA or until December 1, 2030. This is the same as S. 1851.

(f) Actions of the United States as Trustee. The United States is authorized to make the commitments provided in the KBRA in its capacity "acting as trustee for the federally recognized tribes of the Klamath Basin and the members of such tribes." This authorizes the reduction in federal trust responsibility to Basin Tribes that did not sign the Agreements. This is like Section 106(f) of S. 1851. Specifically, KBRA Sec. 15.3.9 provides the assurances of the United States "that it will not assert: (i) tribal water or fishing rights theories or tribal trust theories in a manner, or (ii) tribal water or trust rights, whatever they may be, in a manner that will interfere with the diversion . . . of water for the Klamath Reclamation Project." Existing law requires the United States to protect water needed for tribal fisheries.

(g) Judicial review of the Secretary's decision concerning whether the tribal relinquishment and releases of claims have become effective is available under the Administrative Procedure Act. This is like Section 107 of S. 1851.

(h) Effect of Section. This section of the new bill does not affect the United States' ability to act for a tribe outside the Klamath Basin, nor its ability to act for tribes inside the Basin "in accordance with the Agreements," nor as required by certain statutes such as the Clean Water Act and ESA. In other words, the Agreement approved by the Act may (and do) affect the United States' ability to act for tribes inside the Klamath River Basin, such as the Hoopa Valley Tribe.

#### *Section 6. Water and Power Provisions.*

This inserts a section into the Klamath Basin Water Supply Enhancement Act of 2000, Pub. L. 106 498, by adding relevant definitions and authorizing the Secretary of the Interior to "carry out any activities," including agreements or contracts consistent with the KBRA or UKBCA or to arrange for delivery of federal power to limit the cost of power use to manage water. This new authority is like the provision in Senator Feinstein's Drought Relief Act, S. 2198, before it was amended to remove these provisions concerning Klamath to which the Hoopa Valley Tribe and others had objected.

#### *Section 7. Klamath Tribes Tribal Resource Fund.*

This establishes a fund for implementing the UKBCA. Subsection (f) prohibits per capita distribution of any part of the fund or revenue from any water use contract. Subsection (k) authorizes \$8 million per fiscal year, not to exceed a total of \$40 million to carry out this Section 7. There is no counterpart to this in S. 1851 because the UKBCA had not yet then been signed.

#### *Section 8. Hydroelectric Facilities.*

(a) Secretarial Determination. Like Section 202 of S. 1851, this provides that the Secretary of the Interior will determine whether to proceed with dam removal pursuant to the KHSA. This overrides the usual operation of the Federal Power Act, under which a licensee can make a business decision whether to remove or retrofit facilities in order to comply with modern licensing conditions.

(b) Facilities Removal. Like Section 203 of S. 1851, this allows the Secretary to proceed with dam removal if the States of California and Oregon concur, if non federal funds are available, and if the KHSA has not terminated.

(5) Like S. 1851, this requires the Federal Energy Regulatory Commission to issue annual licenses authorizing PacifiCorp to continue to operate the dams until they transfer title to the dam removal entity. It also provides for a "stay" of licensing proceedings while the KHSA remains in effect. This gives legal approval to the informal stay of proceedings which has been in effect since 2006 because of the Klamath agreements.

(c) Liability Protection. This provides even broader liability protection to PacifiCorp for any harm relating to the dams than did Section 205 of S. 1851. This provision would supersede the normal provisions of the Federal Power Act concerning the potential liability of licensees.

(d) Facilities Not Removed. Like S. 1851, this protects the Keno Dam from removal, addresses planned discontinuation of the East Side and West Side generators at the Link Dam, protects Fall Creek Dam, and addresses Iron Gate Hatchery, which transfers to the state of California.

*Section 9. Administration and Funding.*

(a) Pursuant to the KBRA, this directs the Secretary to “give priority to qualified Party tribes in awarding grants, contracts, or other agreements for the purposes of implementing the fisheries programs described in [KBRA].” This apparently overrides existing contracting rights of non signatory tribes.

(g) Budget. This does not authorize new appropriations for KBRA plans, but merely provides that the “budget of the President shall include such requests as the President considers to be necessary for the level of funding for each of the Federal agencies to carry out the responsibilities of the agencies under the Settlements.” It also directs OMB to submit “an interagency budget cross cut report” showing funding requested. The reference in S. 1851 to Appendix C 2 of the KBRA (the table showing approximately \$1 billion is needed to carry out KBRA plans) has been omitted. Nevertheless, the amounts anticipated for KBRA purposes, to the extent they are reallocated by federal agencies, will reduce funds for existing conservation and restoration programs. (h) Report to Congress. Annually, when the President’s budget is submitted, the Secretaries shall submit a report that describes the status of implementation, expenditures, water deliveries to the Project and the Refuges, and the status of achieving the goals of “sustainable agriculture production” and “the goal of supporting the economic development of the Party tribes.”

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STATEMENT OF THE KARUK TRIBE

The Karuk People have lived along the middle Klamath River for time immemorial, thriving on the natural bounty of the Klamath Basin. However, for the past 150 years the Karuk have struggled against the forces of genocide and assimilation as miners, loggers, irrigators, and dam builders have steadily degraded the Klamath’s ecosystem putting Klamath River fisheries, and Karuk culture, at risk.

Despite the best efforts of colonial invaders to completely eradicate our People or else fully assimilate us into their culture, the Karuk remain independent, strong and resilient. Since being formally recognized by the United States in 1979, we have developed and expanded our capacity for self-governance, continued and broadened our role as a leader in natural resources management in the region, and preserved our language, ceremonies, and traditional arts for future generations.

The Klamath Basin is a large and magnificent place. Although early non-native settlers undoubtedly thought that its natural resources were boundless and impossible to exhaust, we know today that they are not. For decades Klamath fisheries have been in steep decline and water quality has been steadily getting worse. However, it was not until the 2001 water shut off to Upper Basin irrigators followed by the infamous fish kill of 2002 that the Klamath received national attention.

In 2001, just four years after the Endangered Species Act listing of two species of critical import to tribes, coho salmon and Klamath suckers, irrigation deliveries to the Bureau of Reclamation’s Klamath Irrigation Project was shut-off in the midst of a drought. The hard working sons and grandsons of America’s war veterans who were granted homesteads on the Project experienced what the Basin’s Tribal communities had been feeling for over a century—the threat of their entire cultural identity being lost along with their ability to provide for their families.

In stark contrast to the response to the threats to tribal cultures, the United States acted swiftly to make amends with Klamath agricultural communities. In 2002, after the science behind the decision to curtail water deliveries in 2001 was reconsidered, irrigation deliveries resumed despite persistent drought conditions. In the fall of 2002, an estimated 68,000 Chinook salmon died in the lower Klamath River as a consequence of low flows and poor water quality.

For the next several years, the Klamath Crisis grew steadily worse. Klamath communities were locked in a bitter culture war with litigation, competing legislation, protests, and media campaigns pitting neighbor against neighbor. However, from within the crisis a group of leaders representing key constituencies emerged with a bold new approach to resolving what most pundits considered a political impossibility: cooperation and compromise.

As the battle over flows between Tribes, irrigators, fishermen, environmentalists, local governments, and federal agencies grew increasingly intense, PacifiCorp’s Klamath River dams came up for relicensing by the Federal Energy Regulatory Commission (FERC). Although the dams play a fundamental role in the degradation of water quality and fisheries, the main-stem Klamath flow issues were largely unrelated to these dams. Flows in the Klamath are more a function of how the Bureau of Reclamation (BOR) manages diversions to the Klamath Irrigation Project (KIP).

Although the dam relicensing was of obvious import to fishing communities, the relicensing was also important to irrigators. This had nothing to do with water availability as the lower four Klamath River dams provide no irrigation diversions. What was at stake for irrigators was access to affordable power as PacifiCorp's predecessor, the California-Oregon Power Company, entered into low cost power contracts with the KIP as a condition for permission to build the dams over a century ago. As things stood, PacifiCorp had no incentive to continue to provide this low cost power to area irrigators who were facing rate hikes of as much as 1200%.

Although it may seem that dam relicensing has come up at exactly the wrong time given that political tensions were already high following the fish kill, in retrospect the relicensing of the dams came at the perfect moment. It created a forum where virtually all the Basin's stakeholders met and had the opportunity to think creatively for ways to solve what many had come to call the rotating Klamath Crisis. What emerged is a great credit to the commitment, resourcefulness, and grace of the Klamath's unique rural communities. A core group of leaders representing main-stem Tribes, the KIP as well as off-project irrigators, local counties, commercial fishermen and environmentalists started to ask one another and themselves if a grand compromise was possible. Could we work together and find a way to responsibly and fairly share the Klamath's finite water resources such that everyone's communities could survive both culturally and economically?

Soon, negotiations were underway to try and find a way to meet everyone's needs, or at least enough of everyone's needs to allow all of the Klamath's diverse rural communities to survive. After several years and thousands of hours of meetings, in February 2010, the Parties signed the Klamath Basin Restoration Agreement (KBRA) and Klamath Hydroelectric Settlement Agreement (KHSa). Together, these Agreements balance water use between the environment and irrigated agriculture, modernize KIP irrigation infrastructure, restore fisheries habitat, ensure affordable power rates for Klamath irrigators, and remove the lower four Klamath dams.

The Karuk Tribe has invested an extraordinary amount of time and resources reviewing the Agreements. In our view, the technical analyses detailing the environmental benefits of implementation has been exhaustive and thoroughly reviewed by several tiers of expert panels. Overwhelmingly, the scientific community has reached a consensus view that implementation of the Agreements will enable fisheries recovery and water quality improvements.

Despite the enormity of this proposal, several key issues remained unresolved. A large community of irrigators upstream of the KIP were also facing an uncertain future as a 40 year-old water adjudication process remained unresolved. In addition, the realities of the new national financial crisis suggested that the nearly \$900 million price tag associated with implementing the KBRA was now unrealistic. With these and other issues in need of resolution, Senator Wyden, Senator Merkley, Governor Kitzhaber, and Representative Walden convened a Klamath Legislative Task Force. Task Force members represented all major stakeholders in the Klamath Basin and where charged with recommending ways to: 1) lower the costs of implementing the Klamath Agreements, 2) provide affordable power to the KIP and off-project irrigators, and 3) resolve water disputes with irrigators upstream of the KIP.

The efforts of the Task Force were successful. As detailed in the Klamath Task Force Report, the Task Force recommends focusing the KBRA budget on programs that need new appropriations for implementation and rely on existing appropriations to implement other programs where possible. This approach reduces the federal cost of implementing the KBRA by 1/3. Secondly, the Task Force recommends using the Federal Power Program to deliver power to the KIP. However, in order to address the power needs of off-project irrigators, legislation will be necessary to allow these land-owners to participate. The goal of the power program is to achieve a power rate that allows Klamath project and off-project irrigators to remain economically competitive in the region. Finally, the Task Force urged the Klamath Tribes and off-project irrigators to meet as a subgroup to work out a resolution of the longstanding water rights disputes between them that would be consistent with the implementation of the KBRA. They succeeded by developing the Upper Klamath Comprehensive Agreement (UKCA).

Now we have three interlocking agreements that together provide a blueprint for restoring the economy and fisheries of the Klamath Basin. It is important to note that the Parties to the agreements purposefully and willfully structured the agreements to be interconnected. A fundamental principle of the settlement negotiations that led to all three agreements was that all parties receive bargained for benefits simultaneously. This means that no program or action described by any agreement can stand on its own without jeopardizing other parties' participation or fulfillment of specific commitments. We have chosen to work together to meet one another's needs and we all made often painful compromises along the way.

We do acknowledge that support for implementing the Klamath Agreements is not a complete consensus of Klamath Basin stakeholders. There are critics from both ends of the Basin and both ends of the political spectrum. We do assert that the stakeholders with the most at stake do support these Agreements: Tribes that have harvested and managed Klamath River fish for time immemorial and irrigators that use Klamath water to grow their crops. We hope that as we implement these Agreements and the benefits become apparent, that support for them will grow even greater.

#### CONCLUSION

The Klamath Basin is an exceptional place populated by exceptional people. But in many ways it has a dark past wrought with inequities, injustice, and bitter disputes over limited resources. In particular, the Klamath Basin's native people have suffered immense injustices which have still not been addressed. Although the Klamath Agreements do not right all the wrongs of the past, the Karuk Tribe believes they represent a dramatic step in the right direction. The terms of the three Klamath Agreements chart a course of peace and prosperity for all of the Klamath's diverse rural communities that can be enjoyed by future generations from all walks of life. We passionately urge members of congress to act quickly to pass S. 2379.

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#### STATEMENT OF ANDREA KELLY, PACIFICORP, SR. VICE PRESIDENT

Thank you for the opportunity to provide this statement to the Committee and present the views of PacificCorp on an issue of importance to our customers and the Klamath Basin. PacificCorp strongly supports S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014.

PacificCorp applauds the Committee for its interest in seeking solutions to the complex natural resource issues and conflicts that have unfortunately been a part of living and doing business in the Klamath Basin for more than a century. Like other Klamath Basin stakeholders, PacificCorp has been embroiled in the resource-related conflicts and litigation that have marked the Klamath Basin, which is an important part of the company's service territory.

PacificCorp appreciates the continued interest of the Committee in Klamath issues and the reintroduction of implementing legislation on May 21, 2014, by Senators Wyden, Merkley, Feinstein and Boxer.

PacificCorp is a regulated utility that generates and provides electricity to 1.8 million customers in portions of six Western states, including nearly 600,000 in Oregon and Northern California.

The company also owns and operates the Klamath Hydroelectric Project (Project) dams on the Klamath River that would be removed under the Klamath Hydroelectric Settlement Agreement, or KHSA, which the company signed in 2010 along with more than 40 parties that include federal agencies, the states of Oregon and California, Tribes, irrigators, commercial fishing interests and several environmental groups.

PacificCorp is not in the business of removing dams. In fact, the company owns and operates 1,058 MW of hydropower, including the Klamath Project, in the states of California, Idaho, Montana, Oregon, Utah, Washington and Wyoming. PacificCorp values hydropower as a carbon-free and highly flexible power source that helps meet electricity demand in peak hours and integrate variable renewable energy resources.

Although the Company advanced and defended other means to restore fish passage to the upper Klamath Basin through a trap and haul program, the federal agency's mandatory terms and conditions for a new FERC license would require the installation of fish passage at each Project facility. These requirements would require significant capital investment, while other conditions of a new license would mandate reduced river flows through the powerhouses, impacting the economics of the Project.

The company is not a proponent of dam removal as a matter of policy. PacificCorp has both relicensed and removed hydro projects in recent years. The company approaches these business decisions on a case-by-case basis. In the case of Klamath, the company would not support a dam removal outcome absent the terms of the settlement agreement that provide key protections to the Company and its customers from the unknown costs and risks of such an endeavor.

As a regulated utility, the company is obligated to evaluate the costs and risks of available alternatives, and pursue the option that presents the least cost and risk to our customers. The company's support for the KHSA is based on the inclusion of terms in the agreement that ensure removing the dams and replacing the power

they provide will cost less and present less risk for our customers than relicensing. Those terms include:

- A customer cost cap of \$200 million that protects customers from uncertain and potentially escalating costs related to dam removal—to date, approximately \$73 million has been collected from Oregon and California customers and is held in trust by the state utility commissions;
- The transfer of the dams and related Project lands to a third party for removal;
- Liability protection for the Company and its customers should dam removal result in unintended consequences or create unforeseen problems; and
- The ability for our customers to continue to benefit from the low-cost power provided by the facilities until their planned removal in 2020.

The inclusion of these terms into the KHSA allowed the Company to conclude that the KHSA presented a better outcome for customers than continuing to relicense the Project. In addition, the public utility commissions in California, Idaho, Oregon, Utah, Washington and Wyoming agree that the Company's decision to sign the KHSA is in the best interest of our customers based upon these key terms. It is important here to note that neither PacifiCorp nor the public utility commissions have concluded that dam removal by itself is in the best interests of customers or a better alternative than relicensing. Rather, it is the KHSA—along with its protections for the Company and its customers—that represents the better alternative to relicensing.

Absent the terms of the KHSA or a similar settlement that ensures a fair deal for our customers, the company would not pursue removal of the Klamath dams.

It is the company's hope and intent to be part of a broader settlement that can address the priorities of other stakeholders and our neighbors in the Basin, while at the same time protecting the company and its customers from unacceptable cost and risk.

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STATEMENT OF ROB UNRUH, PRESIDENT, KLAMATH WATER USERS ASSOCIATION,  
KLAMATH FALLS, OR

Chairman Schatz, Ranking Member Lee and Members of the Committee:

Thank you for the opportunity to provide this statement in support of S. 2379, and thank you for your leadership in holding this hearing on legislation that is so important to so many people. My name is Rob Unruh. I am a third generation family farmer from Malin, Oregon and I hope that my son can continue to farm as the fourth generation. I currently serve as President of the Klamath Water Users Association (KWUA).

KWUA is a non-profit organization whose members are primarily irrigation districts and similar entities holding contracts with the U.S. Bureau of Reclamation for the diversion, delivery and use of water from the Klamath Reclamation Project (Klamath Project). Thus, my testimony focuses primarily on the circumstances and interests associated with the Klamath Project. KWUA members operate on more than 170,000 acres sustaining approximately 1,200 farms and ranches in south-central Oregon and northern California that depend on the Upper Klamath Lake/Klamath River system for their water supply.

KLAMATH AGREEMENTS

KWUA was a member of the Klamath Basin Task Force (Task Force) created in 2013. Senators Wyden and Merkley, Congressman Walden, and Governor Kitzhaber convened the Task Force “to resolve the water, power and other resource management issues in the Klamath River Basin. . .” They asked the group to address three issues:

1. Develop a proposed resolution of remaining water management issues in the upper Klamath Basin.
2. Address outstanding power issues for the Klamath Reclamation Project and the Upper Basin irrigators.
3. Reduce the Federal costs of achieving long-term sustainability in the Klamath Basin.

The Task Force was an effort designed to build on the significant work that had already been done by an impressive and disparate group of interests in the development of two other regional settlement agreements. The Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSA) were signed by 42 parties (including KWUA) in 2010. In addition to work on these agreements, KWUA member districts have also been actively engaged in the ongo-

ing Klamath River Basin Adjudication process, and work daily with federal agencies, tribes and other stakeholders in determining water supply availability, consistent with the Biological Opinions that ensure that the operation of the Klamath Project is in compliance with the federal Endangered Species Act (ESA).

While meaningful work remains to be done on addressing power issues for the Klamath Basin irrigators, the Task Force successfully addressed issues related to lowering the federal costs of the agreements and resolving some remaining water management issues in the upper Klamath Basin (off-Project). KWUA congratulates the parties who recently signed the Upper Klamath Basin Comprehensive Agreement for their hard work and dedication in addressing both key elements of the water resource puzzle in the Basin as well as the interests of their communities.

#### ONGOING CRISIS

The Klamath River watershed covers nearly 16,000 square miles and it often seems like there are about 16,000 interests with their own individual opinions about how to solve the difficult problems of the Klamath Basin. Every person or entity that you hear from regarding this legislation is likely to agree that the Klamath Basin is in trouble and most, if not all, of the stakeholders who call the Basin home badly want to fix the problems. This year's desperate water situation is a familiar and recurring story and is just the latest installment in a continual slow-motion disaster that is grinding away at our communities and ways of life. We are encouraged by this Committee's willingness to examine the complex water resources problems of the Klamath Basin, where federal actions and responsibilities influence almost everything we do. Along with other Basin stakeholders, it is time for the U.S. Congress to join us as part of the solution.

And we need a solution urgently. As you prepare for this hearing, farmers and ranchers on thousands of acres in the Klamath Project face the possibility having their water cut off mid-season, drying up crops before they can be harvested. The 2014 irrigation season marks the third year in row of significant water shortage to Klamath Project irrigators and the fourth in the last five. The amount of this year's shortage of water available for the Klamath Project is estimated to be at nearly 45%. These continual and unpredictable shortages wreak havoc on maintaining a viable agricultural economy in the entire region. Beyond the Klamath Project, some ranchers and farmers outside the Project will be regulated off because of water right priorities, greatly taxing the sustainability of their operations and causing tensions between irrigators inside and outside the Klamath Project as well as with tribal communities who themselves are struggling to protect fishery resources that have sustained them for generations. Federal wildlife refuges are enduring yet another too-dry year. Add to all of this, unprecedented and unsustainable increases in energy costs for family agricultural operations, and 2014 again looks like a very bleak year for the Klamath Basin—another year of crisis characterized by severe stress for our economy, communities, natural resources, and people.

We believe that S.2379 offers the best, most durable way to end this cycle of crisis and decline. Its passage will put in place a comprehensive solution that is intended to meet the needs of all the communities in the Basin. It would implement the only proposals that have been derived from consensus and the only plan that doesn't seek to advantage one community or point of view at the expense of others. We ask the committee to fully examine the Klamath Settlement Agreements and to advance this legislation which capitalizes on the efforts that so many diverse interests have put into finding a meaningful resolution to one of the West's most intractable water conflicts.

For the irrigators on the Klamath Project, continuation of the status quo is the worst-case scenario for our community and its economy. A highly uncertain water supply and very expensive electric power are making it increasingly difficult to operate successfully. Without a significant change in course, irrigated agriculture simply won't have a future in the Basin.

In recent years, the Klamath Project's annual operations have been characterized by insecurity and uncertainty, with farmers never sure how much water they will get for the season and whether that supply will be reduced or cut off completely before crops mature. This makes planning for the growing season very difficult.

As they have watched their historical water supplies diminish and become less secure, Klamath Project irrigators have seen their electric rates climb sharply. This is because instead of building hydroelectric generation into the Klamath Project, as is common elsewhere in the Reclamation system, the federal government chose to enter an arrangement with a private utility for low or "at-cost" power to run project pumps and other facilities. When that arrangement dissolved a few years ago, electric rates rose to levels many many times higher than irrigators had paid in the



past. The added costs are disrupting the economics of farming in the Basin to such an extent that many current family operations may not be able to survive much longer, and beneficial water management and efficiencies are likely to be impaired.

The KBRA changes the status quo to provide a secure and sustainable future for the agricultural community in the Basin.

In exchange for giving up part of their water supply for fishery purposes, project irrigators would gain much greater certainty. The Agreement holds agricultural water supplies to a predictable range, and farmers would know on March 1 of each year what their water supply will be for the season—and they will be able to count on the delivery of that supply. To help make up for the loss of water dedicated to fishery purposes, the KBRA requires a detailed On-Project Plan—already developed by water users—to manage the shortage through conjunctive use of groundwater, water banking, land fallowing and other mechanisms whose results can be measured and tracked to ensure that federal resources are generating the expected benefits for the Basin.

To address power costs, the KBRA includes the Power for Water Management Program aimed at ensuring Klamath Project power rates are “at or below the average cost for similarly situated Reclamation irrigation and drainage projects.” The program consists of components that include short-term funding to stabilize power costs; acquisition of federal power generated at other Bureau of Reclamation facilities and development of local power generation opportunities. The results of the Power Program also will be clear and quantifiable.

The KBRA’s On-Project Plan and Power for Water Management Program will ensure the continuation of an agricultural sector in the Upper Klamath Basin that provides an estimated \$650 million per year in economic benefit and secure the future of our communities whose existence depends upon the balanced operation of the Klamath Project.

Mr. Chairman, for many years we have “argued the science” with federal agencies and other stakeholders. We tried to have our public relations efforts outdo theirs. We talked to commercial fishermen, tribes and conservation groups only from opposite sides of a courtroom, and we often dueled from different sides of the political aisle through our elected Representatives at Congressional field hearings and in Washington. Nothing got better. Our elected officials offered constructive ideas, but told us that for any solution to work it had to come from the Basin, and that meant doing things differently. It meant working with each other, instead of against each other. And that’s what we did. Some interests came and went from the table, others decided to draw a line in the sand and not negotiate, but most of us hung in there and did the hard work of finding common ground and a common purpose. The result is three separate but linked agreements that are meaningfully bound together in S. 2379.

#### SPECIFIC COMMENTS ON S. 2379

As with any legislation that is implementing complex agreements between multiple diverse parties, there are portions of the bill that, considered in isolation, would be of concern to us. Our litmus test, however, is not based on our personal preference or gains, but rather on consistency with the foundational negotiated agreements, which reflect true compromise and diverse communities cooperating to address each others’ needs.

We appreciate the excellent work of the authors in drafting legislation consistent with the settlement agreements. We believe there are only technical issues requiring attention, albeit some that are important. For example, one issue that we believe is an oversight yet is of concern related to already agreed upon language is found in Section 4(a)(2)(A) of the legislation which says:

“The fish and wildlife purposes of the Klamath Reclamation Project authorized under paragraph (1) shall not adversely affect the irrigation purpose of the Klamath Project.”

However, to be consistent with the underlying agreements, this should say:

“The fish and wildlife and National Wildlife Refuge purposes of the Klamath Project authorized under paragraph (1) shall not adversely affect the irrigation purpose of the Klamath Project.”

These purposes are distinct and different. This change is necessary to be consistent with Appendix A of the KBRA. This is an important issue to Klamath Project irrigators and others and we do not believe any party to any of the agreements would have concerns with this proposed change.

Respectfully, we intend to seek an amendment to reflect this necessary change.

## CONCLUSION

In previous testimony submitted by our Executive Director to the full Committee on Energy and Natural Resources last year,<sup>1</sup> we focused on describing the background and the contentious history of water resource issues in the Klamath Basin and discussed how Klamath Project water users and our former adversaries arrived at the Klamath Settlement Agreements; what water users gave and gained to make the Agreements work for us; and identified the elements that should be part of any viable solution advanced by Congress. We would like to incorporate that testimony by reference here today.

What I want to emphasize to this Committee is that these agreements, and this implementing legislation, despite what you will hear from interests on the extremes, offers a positive and productive path forward that will allow us to begin to repair our fractured community. Admittedly, my emphasis is on the Klamath Project and we believe the Klamath Settlement Agreements are far superior to other alternatives and their attendant uncertainty, risk, costs, and conflict. Action is needed, the future of our communities is at stake and multiple crises are already upon us.

Locally, water managers, full-time farmers and ranchers, local businesses and other professionals are committed to finding a better way to do business. It is these people and organizations (along with our settlement partners) that are the driving force behind the agreements that have led to this legislation.

We hope others can begin to see the positive economic, social and natural resource related benefits this legislation can provide to the region. KWUA will not stop pushing for real change because we understand what it means to keep things the same. Time is of the essence and Congress must have a sense of urgency as it studies the next steps. The people most affected by these resource issues support this approach. Others must quickly and constructively engage, or step aside. We look to the leadership of this Committee to start the process that is needed to authorize these agreements before there is nothing left to save.

Thank you for the opportunity to provide this testimony.

STATEMENT OF THE PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS  
(PCFFA)

WHY CONGRESS MUST ACT TO RESTORE THE KLAMATH

*By Glen Spain, PCFFA NW Regional Director.*

As the U.S. West Coast's largest trade association of commercial fishing families, representing a multi-billion west coast commercial salmon fishery, we strongly support S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014. Passing this important bill means hundreds of new jobs in our industry, thousands of existing jobs better protected, and an end to major Klamath-driven salmon fisheries collapses and closures like we experienced in 2006, which cost our industry some \$200 million in total economic losses, and cost the U.S. Treasury \$60.4 million in emergency disaster relief. One of the most important and most urgent actions that can be done to restore the battered West Coast ocean commercial salmon fisheries in the "Lower 48" is to restore the valuable and once-great salmon runs of the Klamath River.

WHY RESTORING THE KLAMATH MATTERS TO THE COMMERCIAL FISHING INDUSTRY

The Klamath Basin was historically the third-largest salmon producing river system in the U.S. outside of Alaska, with its large original salmon populations only surpassed by the Columbia and Sacramento-San Joaquin Rivers. Before European development, the Klamath produced an estimated average of 880,000 returning adult salmonids each year. Today, however, more than 90% of its salmon habitat has been destroyed or blocked, too little water remains in its rivers and its salmon runs are often at less than 10% of historic numbers.

Decades of cyclical water crises in the Upper Klamath Basin have also had major regional economic impacts, including throughout much of the West Coast commercial ocean salmon fisheries and in the many coastal communities our industry supports. The depressed fall-run Chinook salmon stocks of the Klamath are in the very heart of the West Coast's "Lower 48" ocean salmon commercial fishery, and thus intermingle in the ocean with all other salmon stocks all the way from Monterey,

<sup>1</sup> Testimony of Greg Addington, Executive Director, Klamath Water Users Association Before the Committee on Energy and Natural Resources, United States Senate \* Hearing on Water Resource Issues in the Klamath River Basin - Washington, D.C., June 20, 2013

CA to central Washington (see APPENDIX 1 attached). In such intermingling fisheries, it is always the weakest salmon stock which determines the total harvest—a process called “weak stock management.”

These “weak stock management” constraints are not optional—they are required both by law and by the rules of biology. Without those constraints many salmon stocks would go extinct.

In the past, under these “weak stock management” principles, most recently in 2006, our industry has been forced to shut down ocean commercial fisheries whenever depressed Klamath fall-run Chinook can potentially migrate. Sometimes, such as in the 2006 collapse, we have had to shut down fishing over more than 700 miles of coastline (i.e., from northern California to southern Washington). In such years these weakest-stock Klamath fall-Chinook salmon have to be declared out of bounds and placed in a “zero-harvest regime” under weak stock management principles just to prevent their ultimate extinction. This means we sometimes have to forego harvesting more than 100 otherwise harvestable and abundant salmon just to protect each individual Klamath-origin salmon.

In spite of a helpful upward spike in escapement numbers in recent years, these Klamath-origin fall-Chinook stocks that our industry could harvest for America’s tables still remain very weak. Widespread Klamath basin water over-appropriation is a particularly intractable problem, and lack of water in-river has led to massive salmon fish kills in the past, as in 2002.

Conflicts over water in particular in the Klamath basin have led to decades of economic turmoil. Most recently, as a result of massive water over-appropriation problems in the Klamath Basin, there have been back-to-back water, farming and fisheries crises in 2001, 2002, 2005, 2006, 2007, 2010 and 2013 that resulted in rotating economic disasters throughout the Klamath basin, punctuated by nearly constant litigation and political gridlock. These back-to-back crises also required large amounts in federal emergency disaster aid between the years 2001 and 2010—about \$17 million in federal disaster aid per year average during that decade—and in just one year (2006) as much as \$60.4 million. Similar rotating economic disasters—and consequent need for ever more federal disaster assistance—would likely recur and worsen in the future unless the systemic water over-allocation problems in the Klamath basin are ultimately fixed.

#### HOW KLAMATH RESTORATION BENEFITS COMMERCIAL FISHERMEN AND BOTH COASTAL AND FARMING COMMUNITIES

The broad-scale Klamath Basin restoration efforts that the Klamath Settlement Agreement would implement through S. 2379 would have wide-spread economic benefits for the Klamath basin, including all its farming and ranching communities and its Tribes, and for many California, Oregon and Washington coastal salmon fishing-dependent communities.

If the Klamath Settlement is implemented, the salmon runs of the Klamath would nearly double as a result of full implementation of both the habitat restoration and water reallocation components of the Klamath Settlement, restoring hundreds of lost fishery-dependent jobs. Because the Settlement also provides more water certainty for farmers, many more jobs would also be restored in upper basin farming communities as well. Estimates under the recently completed NEPA analysis indicate that full implementation of the Klamath Settlement Agreements would mean adding at least 4,600 additional jobs to the basin and region. And most of those jobs in both the farming and fisheries sectors would be permanent. In these depressed rural economies this is no small economic benefit.

Once approved by Congress, the three Klamath Settlement Agreements would, among other benefits: (1) permanently restore between 130,000 and 230,000 acre-feet of water back to the Klamath River to benefit salmon, the total amount each year depending on rainfall; (2) help “drought proof” both the upper and lower basin and its salmon runs as much as humanly possible, including implementing the Settlement’s first ever “Drought Plan” for the river; (3) restore access for salmon to more than 420 stream-miles of previously occupied habitat now blocked; (4) restore large portions of the upper Klamath basin fish and wildlife habitat in ways that are compatible with existing agriculture; (5) greatly improve Klamath River water quality, gravel recruitment and other ecological functions necessary for maximizing salmon production; (6) greatly diminish the incidence of various fish pathogens and diseases that are exacerbated by current poor in-river water quality conditions; (7) provide the Lower Klamath and Tulelake National Wildlife Refuges a guaranteed annual water supply for the first time ever, greatly benefiting waterfowl that depend on these Refuges as a major stopover on the Pacific Flyway; (8) authorize a highly cost-effective and coordinated 50-year salmon habitat restoration program to

help fully restore the basin's damaged salmon habitat over time; (9) benefit the upper basin farming community by providing both much greater water certainty as well as more affordable power for irrigation pumping to make more efficient use of that water, and; (10) put an end to nearly 100 years of hotly contentious water disputes in what has long been one of the most bitter water conflicts in the arid West.

A thorough scientific and economic NEPA analysis has already been done on the likely impacts of the Klamath Settlement, and those results are very encouraging. None of the various "scare stories" about toxic sediments, negative impacts on flood control or irrigation impacts have been shown to have any merit. More than 50 detailed technical and peer-reviewed scientific and engineering studies were completed for this NEPA analysis, and the analysis itself was subjected to highly unusual triple levels of independent scientific peer review, assuring that all potential biases or errors have been eliminated. No complaints of any alleged scientific bias have ever been upheld, nor found to have any merit.

#### THE KLAMATH SETTLEMENT GIVES HOPE FOR ECONOMIC STABILITY AND AN END TO 100 YEARS OF CONFLICT

On February 18, 2010, after nearly 100 years of increasingly bitter Klamath Basin "water wars," including many lawsuits, and after several disastrous Klamath-driven 2005, 2006 and 2007 partial or complete shutdowns of ocean commercial salmon fisheries over more than 700 miles of coastline, some 43 major stakeholder groups and agencies came together to announce that they had finally reached a two-part "Klamath Settlement" that gave real hope for stabilizing and restoring that key West Coast salmon-producing basin—and ultimately restoring thousands of lost fishing industry (as well as farming) jobs that were all at risk because of widespread water over-allocation and conflict.

Most recently, a third major component of the Klamath Settlement Agreement, called the "Upper Klamath Basin Comprehensive Agreement" joined the two prior agreements to help resolve otherwise intractable water conflicts in the upper Klamath basin. This third agreement was signed on March 5, 2014. It is fundamentally a water-sharing agreement among various upper basin stakeholders intended to help them all survive the current and future droughts in this drought-prone basin. This will also help bring economic stability to the upper basin.

The Klamath Settlement is a bi-partisan, bottom-up, stakeholder-driven and both biological and economic restoration plan. It is also precisely the sort of long-term, locally-based restoration plan we were told by previous Congress's was needed. The settlement process was mostly conducted under a Republican Administration (i.e., under President Bush) and has been supported by Republican and Democratic Administration officials and Governors from all political persuasions.

These three key components of the overall Klamath Settlement Agreement should now be approved and moved forward by the passage of S. 2379 into law.

For the West Coast salmon-dependent communities of California, Oregon and southern Washington, continued Congressional inaction on solving the Klamath's salmon decline problems is simply not acceptable.

Failure to pass the necessary legislation (S. 2379) to fully implement these landmark Klamath Settlement Agreements puts the entire mixed-stock ocean commercial salmon fisheries of northern California, Oregon and southern Washington—a fishery worth several hundred million dollars a year—at continued risk of future Klamath-driven coastwide closures.

Without the Klamath Settlement, and particularly without its water-sharing plan for dealing with current and future droughts, both the upper and lower Klamath basin would once again be plunged into economic chaos and litigation over conflicting water rights and needs, many upper basin farmers and ranchers would have their irrigation water once again dramatically cut off, and hundreds of them would ultimately lose their farms, ranches—and livelihoods.

The economic "cost of doing nothing" in the Klamath basin is thus very high—almost certainly much higher than the costs of actually fixing these pervasive problems. The modest federal investment required in actually resolving these problems would return huge economic dividends in terms of much greater economic stability and thousands of new jobs for the entire region.

This once-in-a-lifetime economic restoration opportunity should not now be sabotaged by Congressional inaction. The Klamath Basin will almost certainly return to the chaos and conflicts of the past if these conflicts are not ultimately—and soon—resolved through this comprehensive Settlement. There is no other viable alternative even remotely on the table.

For more information on the Klamath Settlement see:

- Klamath Settlement NEPA Economic, Engineering, Scientific Studies and Impacts Analysis are at: [www.klamathrestoration.gov](http://www.klamathrestoration.gov). For the Executive Summary of the Final NEPA analysis see: <http://klamathrestoration.gov/sites/klamathrestoration.gov/files/Additional%20Files%201/Executive%20Summary.pdf>
- For general information on the Klamath Settlement and its benefits: [www.klamathrestoration.org](http://www.klamathrestoration.org)
- For details about the Klamath Settlement and its many benefits to west coast commercial and recreational salmon fisheries, see: “The Klamath Settlement: Hope for West Coast Salmon Fishermen,” (July, 2010 FN at: [www.pcffa.org/fn-jul10.htm](http://www.pcffa.org/fn-jul10.htm)). For how the Klamath is key to managing all West Coast ocean salmon fisheries in the Lower 48, see “Why the Klamath Matters to Fishermen” (August, 2001 FN at: [www.pcffa.org/fn-aug01.htm](http://www.pcffa.org/fn-aug01.htm)).

